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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1965

No. 161

DORA SUBOWITZ, ETC., PETITIONER,

vs.

HILTON HOTELS CORPORATION, ET AL

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED MAY 20, 1965

CERTIORARI GRANTED OCTOBER 11, 1965

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APPENDIX.

6 IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

Dora Surowitz, individually and on
behalf of all other similarly
situated shareholders of Hilton
Hotels Corporation,

Plaintiff,

vs.

Hilton Hotels Corporation, a cor-
poration, Conrad N. Hilton, Rob-
ert P. Williford, Robert J. Cav-
erly, Joseph P. Binns, Spearl
Ellison, Henry Crown, Horace C.
Flanigan, Benno M. Bechhold, Y.
Frank Freeman, Willard W.
Keith, Lawrence Stern, Sam D.
Young, Fritz B. Burns, Vernon
Herndon, Herbert C. Blunck,
Charles L. Fletcher, Robert A.
Groves, Joseph A. Harper, Bar-
ron Hilton, and Hilton Credit
Corporation, a corporation,

Defendants.

Civil Action
No. 63-C-2248
Equitable Relief
Requested.

COMPLAINT.

Count I.

Plaintiff complains of the defendants, except the de-
fendant Hilton Credit Corporation, and each of them, as
follows:

1. Plaintiff Dora Surowitz resides in and is a citizen

of the State of New York and is currently, and at all
7 times during the years 1962 and 1963 pertinent hereto
has been, a holder and owner of shares of \$2.50 par
value common stock of defendant Hilton Hotels Corpora-
tion, which stock is registered and listed on and traded over
the New York and Pacific Coast Stock Exchanges. Plain-
tiff brings this action to enforce rights of the defendant
Corporation, Hilton Hotels Corporation, on her own behalf
and on behalf of the other approximately 12,000 holders
of common stock of the Corporation. This action is not
a collusive one to confer jurisdiction on this Court.

2. Defendant Hilton Hotels Corporation is a Delaware
corporation which maintains its principal place of busi-
ness and its executive offices in Chicago, Illinois; said de-
fendant transacts business in the Northern District of
Illinois. The Corporation has approximately 12,000 stock-
holders. Defendant Hilton Hotels Corporation owns and
operates a large number of hotels and inns in various
states in the United States and also in foreign countries.

3. For a period of time prior to December 17, 1962 and
to and including the present time, and all times relevant
to the matters alleged herein, each of the individual defend-
ants was and now is an officer or director, or both an
officer and director, of defendant Hilton Hotels Corpora-
tion, and collectively said individual defendants as
8 officers, directors, and stockholders, controlled and now
control the affairs of the defendant Hilton Hotels Cor-
poration. The individual defendants were and are officers
or directors, or both, of defendant Hilton Hotels Corpora-
tion, as follows:

Conrad N. Hilton, Director, Chairman of the Board,
and President.

Robert P. Williford, Director, Vice Chairman of the
Board.

Robert J. Caverly, Director, Executive Vice President.

Joseph P. Binns, Director, Senior Vice President.
Spearl Ellison, Director, Senior Vice President.
Henry Crown, Director, Vice President.
Horace C. Flanigan, Director.
Benno M. Bechhold, Director.
Y. Frank Freeman, Director.
Willard Keith, Director.
Lawrence Stern, Director.
Sam D. Young, Director.
Fritz B. Burns, Director.
Vernon Herndon, Senior Vice President.
Herbert C. Blunck, Vice President.
Charles L. Fletcher, Vice President and Treasurer.
Robert A. Groves, Vice President.
Joseph A. Harper, Vice President.
Barron Hilton, Vice President.

9 Defendant Conrad N. Hilton, in addition to being an officer and director, is the largest single holder of shares of common stock in the defendant Corporation, holding approximately twenty-three per cent of the outstanding shares.

4. The claim herein pleaded arises under Section 10(b) of the Securities Exchange Act of 1934, 15 U. S. C. § 78j(b), and the Rules of the Securities and Exchange Commission adopted thereunder. Section 10(b) of the Securities Exchange Act of 1934 reads as follows:

Sec. 10. It shall be unlawful for any person directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

• • • • •

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 of the Rules adopted by the Securities Exchange Commission under Section 10 of the Act of 1934 reads as follows:

Rule 10b-5. Employment of Manipulative and Deceptive Devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality
10 of interstate commerce, or of the mails, or of any facility of any national securities exchange,

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

5. Jurisdiction of this matter is conferred on this Court by Section 27 of the Securities Exchange Act of 1934, 15 U. S. C. § 78aa; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U. S. C. § 1337.

6. In December of 1962 and January of 1963, the individual defendants, as the officers and directors having control over the affairs of the defendant Hilton Hotels Corporation, caused the defendant Corporation to issue a document entitled "Letter of Transmittal", a document entitled "Offer", a document modifying said offer entitled "Notice", and a letter to be transmitted through the United States mails to the shareholders of defendant Hilton Hotels Corporation, including plaintiff, wherein the defendant Corporation, for a limited period of time and under certain
11 specified conditions, offered to purchase 300,000 shares of its outstanding \$2.50 par value common stock at

a price or prices between \$28.125 and \$29.50 per share. True and correct copies of the documents mentioned above, namely the Letter of Transmittal dated December 17, 1962, the Offer dated December 17, 1962, and the Notice dated January 7, 1963, and the letter dated January 7, 1963, are attached hereto and made a part hereof by reference thereto as Exhibits "A", "B", "C", and "D", respectively.

7. In making the offer above described, the individual defendants stated in writing, in the Offer of December 17, 1962 (Exhibit "B" attached hereto), which document was transmitted through the United States mails to shareholders of the defendant Corporation, the reason why the offer was being made, as follows:

"The purpose of Hilton in making this offer is to re-purchase a portion of the Common Stock of this corporation equal to the number of shares heretofore issued in connection with the acquisition of certain properties, which properties are no longer owned by this corporation."

No other statement of reasons appears in any of the above-designated documents.

8. Said explanation was false and misleading, and was known by the individual defendants to be false and misleading, in the respects indicated hereinafter. Said false and misleading statement, the offer to purchase 300,000 shares of common stock described above, and the documents specified above which were sent out by the individual defendants to the shareholders were integral parts of a manipulative and deceptive device or contrivance and of a scheme to defraud, and constituted acts and practices carried out in the course of the execution of such device and scheme, all in violation of the provisions of Section 10(b) of the Securities Exchange Act of 1934 and the Rules of the Securities and Exchange Commission promulgated thereunder, in that—

(a) The individual defendants were engaged in a plan and scheme to make it possible for defendant Conrad N. Hilton and other officers and directors to dispose of shares in the defendant Corporation at prices more favorable than they could obtain in the market, at a time when they knew or should have known that the business affairs of the defendant Corporation would shortly lead to a substantial drop in the value of the shares. Furthermore, the individual defendants were engaged in a plan and scheme to make it possible for defendant Henry Crown to dispose of large holdings in the common stock of the defendant Corporation held by him individually, by other entities controlled by him, by members of his family, and by trusts established for various members of his family, as to some of which he was grantor, beneficiary, or remainderman, at prices above the market prices for such stock, under circumstances whereby such disposal of stock would not become publicly known.

- 13 (b) The individual defendants acted in such a way as to conceal from the defendant Corporation and from its stockholders the true purpose of the offer to purchase described above, and in such a way as to make it appear that it was to the Corporation's advantage to effect such a purchase of approximately 10 per cent of its outstanding shares. In fact, such a purchase was contrary to the defendant Corporation's interest, since the effect of it was to reduce working capital by approximately \$8,564,000 at a time when the Corporation's debts and commitments were increasing. By the end of 1962 the Corporation's long-term debt, on a consolidated basis, amounted to more than \$133,000,000 and exceeded the amount of long-term debt at the end of 1961 by more than \$50,000,000. By the end of 1962, the Corporation had invested more

than \$197,000,000 in properties, plant, and equipment, or almost \$50,000,000 over and above its investment at the end of 1961 after subtracting dispositions and depreciation during the year. By the end of 1962, the Corporation had outstanding construction commitments in excess of \$15,000,000. The Corporation also had issued guarantees on various obligations and transactions exposing itself to possible liabilities in excess of \$20,000,000. By the end of 1962 the current assets of the Corporation had been reduced by \$9,500,000 compared to year-end 1961, while current liabilities had increased by more than \$2,500,000. Furthermore, the Corporation, at the end of 1962, announced plans to invest an additional \$21,000,000 in new properties during 1963. These facts negated any pretense of contraction of activities and of a corporate need to eliminate the Corporation's own outstanding stock by using allegedly excess funds not required in the business.

(c) The individual defendants represented that the shares to be purchased were equal in number to shares previously issued in connection with certain properties no longer owned by the defendant Corporation. In fact, however, the number of shares outstanding in December 1962 which were properly countable as shares previously issued for the acquisition of properties thereafter disposed of did not exceed approximately 150,000 shares, not 300,000 shares as represented by the individual defendants. During a period of years prior to 1962 the Corporation had followed a practice of purchasing its own stock by means of regular market transactions on the stock exchanges; at the end of 1962 the Corporation had in this way acquired almost 700,000 shares of its own common stock, which was held as treasury stock.

- (d) The individual defendants represented that "the closing price of [the Corporation's] stock on the New York Stock Exchange at the close of business on the date preceding this offer was \$28.125" and described this figure as the "current market price". The individual defendants therefore indicated that tenders of shares could be made at any price between \$28.125 and \$29.50 per share. Said representation was misleading in that the individual defendants omitted to disclose that they had engaged in acts and transactions, including the purchases of shares and transmission or "leaking" of information about the tender prices, designed to peg, fix, rig, and artificially inflate the price of the stock, in order to achieve temporarily, in the period of time immediately prior to December 17, 1962, a price on the market at the lower end of the scale of prices the individual defendants proposed to use for the purposes of their scheme and plan. During the first quarter of 1962, the price per share of the Corporation's common stock in stock exchange transactions ranged from \$29 $\frac{1}{2}$ to 33 $\frac{1}{2}$; during the second quarter, the range was 23 $\frac{1}{2}$ to 30 $\frac{1}{2}$; during the third quarter, the range was \$23 to \$25 $\frac{1}{2}$; and during October and November, 1962, the range was \$22 to \$25 $\frac{1}{2}$. For the six-month period prior to December 17, 1962, the price of the defendant Corporation's stock exceeded \$28 per share on only two trading dates, one on December 14, 1962, and the other, two days earlier. During the month prior to December 10, 1962, the price of the stock did not even momentarily reach \$27 per share. After consummation of the scheme and plan on January 24, 1963, the price of the stock dropped steadily over several months to a current price of \$15 $\frac{1}{2}$ to \$16 per share.

(e) In making said representations, the individual

defendants did not disclose that financial information available to them as officers and directors made it apparent that the earnings of the defendant Corporation were declining and that, at subsequent public announcements of relevant financial information of the Corporation, the market price of the defendant Corporation's shares was most likely to fall by reason of reduced earnings. Operating profits for 1962 were less than 80% of operating profits for 1961, and in fact were the lowest such profits since 1954. Thereafter, profits for the first quarter of 1963 were approximately 40% below profits for the first quarter of 1962.

(f) The letter of January 7, 1963 (Exhibit "D" attached hereto), which accompanied the Notice of the amendment of the original offer, said Notice being dated January 7, 1963 (Exhibit "C" attached hereto), was deliberately written for the purpose of leading the shareholders of the defendant Corporation into the false belief that the Corporation was prospering, that its prospects were good, and that various financial transactions mentioned therein were constantly improving its position, earnings, etc. Said letter was intended to create a false sense of well-being, thereby to induce shareholders to believe that the officers and directors of the defendant Corporation, including the individual defendants, were acting wisely and in the interests of the Corporation in causing the Corporation to purchase 300,000 shares, and thereby allaying concern over the disposition of shares by the individual defendants. Said letter was further designed falsely to make it appear that the defendant Corporation would in fact be harmed and its interests prejudiced if enough shares, including shares of officers and directors, were not tendered to make it possible to purchase 300,000 shares.

(g) The Notice dated January 7, 1963 (Exhibit "C" attached hereto), which advised the shareholders of certain modifications in the original offer of December 17, 1962 (Exhibit "B" attached hereto), contained the following statement:

"2. Mr. Conrad N. Hilton, Chairman of the Board, President, and the principal shareholder of the corporation, has advised the corporation that he will tender 85,847 shares of common stock pursuant to the terms of the Offer, which is the number of shares of common stock he may have been required to tender under the terms of the Offer."

18 Said statement was false and misleading, and was known to the individual defendants to be false and misleading, in that it advised the shareholders that defendant Conrad N. Hilton, although entitled to offer more than ten per cent of his stockholdings by virtue of the January 7, 1963 amendment to the offer, would still offer only ten per cent, namely, 85,847 shares. In fact, the total of 85,847 shares was in excess of ten per cent of the holdings of defendant Conrad N. Hilton on January 7, 1963 and on December 17, 1962. Said statement was further false and misleading in that it did not disclose that defendant Conrad N. Hilton had agreed to purchase over 101,000 shares from defendant Henry Crown, from entities controlled by defendant Crown, from members of defendant Crown's family, and from trusts for the benefit of members of defendant Crown's family. Failure to disclose this circumstance helped to conceal the extent to which the plan and scheme and its implementation were intended to inure to the benefit of defendant Henry Crown and his family.

(h) The defendants Conrad N. Hilton and Henry

Crown, and the family interests of Henry Crown, could not have otherwise sold the stock which was disposed of by them pursuant to the defendant Corporation's offer except by a secondary public offering, with all of the high costs attendant thereupon, with full disclosure of material facts to the public by way of registration in conformity to the federal security laws and rules and regulations, at a price far below the tender range of the defendant Corporation's offer, and at a time when the market for public offerings was unfavorable. It was the purpose and intent of the individual defendants, by their illegal plan, scheme, and contrivance, to avoid any such disadvantageous consequences to their own personal interests.

9. As the result of said manipulative and deceptive device and scheme, and its carrying out pursuant to the false and misleading representations and deceptive actions specified above, the defendant Corporation was caused by the individual defendants to purchase a total of 300,000 shares of its common stock for a total price of \$8,564,245.81. Included in said shares were at least 101,650 shares purchased, by the use of the United States mails and other means of transportation and communication in interstate commerce, from the officers and directors of the defendant Corporation, including shares from the individual defendants as follows:

Conrad N. Hilton.....	85,847
Sam D. Young.....	353
Vernon Herndon	1,147
Herbert C. Blunck.....	393
Charles L. Fletcher.....	4,100
Robert A. Groves.....	6,000
Joseph A. Harper.....	2,150

The shares sold by defendant Conrad N. Hilton were in excess of ten per cent of the shares he owned on December

17, 1963. The shares sold by the other above-named
20 individual defendants (excluding Conrad N. Hilton)
constituted, in the aggregate, approximately 43 per
cent of the shares they owned on December 17, 1963. The
shares disposed of by defendant Henry Crown and mem-
bers of his family and by trusts for the benefit of defend-
ant Henry Crown and relatives of defendant Crown, both
directly through sales to the defendant Corporation pur-
suant to the offer described above and indirectly through
a sale to defendant Conrad N. Hilton (who in turn sold
most of the Crown shares so acquired to the defendant
Corporation pursuant to the offer) amounted to substan-
tially in excess of 50 per cent of the total shares held by
defendant Henry Crown and members of his family and
trusts in which he or members of his family were inter-
ested as grantors, beneficiaries, or remaindermen as of
December 17, 1962. At all times between December 17,
1962 and January 24, 1963, defendants Conrad N. Hilton
and Henry Crown and all the other individual defendants
knew or had reason to know, on the basis of financial in-
formation relating to the operations of defendant Hilton
Hotels Corporation available to them as directors and
officers, that the market value of the common stock of the
defendant Corporation would in all likelihood fall rapidly
in the year 1963 to levels far below the \$28.125 to \$29.50
range of prices set forth in the offer.

10. The scheme and plan outlined in the documents
(Exhibits "A", "B", "C" and "D" attached hereto)
21 sent to the shareholders in the manner described above
was further devised to enable the individual defend-
ants to defraud the defendant Corporation and the share-
holders thereof, in that it specified that tenders of shares
could be made at a range of prices from \$28.125 per share
to \$29.50 per share. Said individual defendants were in
a position to advise themselves and did inform themselves,

on a day-to-day or hour-to-hour basis, precisely as to how many shares had been tendered and at what prices. Thus, the terms of the plan for the purchase by the defendant Corporation of 300,000 shares were deliberately contrived and availed of to insure the success of the individual defendants in disposing of the number of shares they wished to dispose of. Defendant Conrad N. Hilton informed the defendant Corporation on or before January 7, 1963 that he would tender 85,847 shares. All of said shares were in fact purchased by the defendant Corporation. Defendant Conrad N. Hilton tendered them at a price which, on the basis of the prices at which other shares were offered, he knew would result in his shares being purchased as part of the 300,000 shares to be acquired by the defendant Corporation. Tenders by many stockholders other than the individual defendants were rejected because those stockholders were underbid by the insiders, including specifically, the individual defendants who tendered shares to the defendant Corporation.

22 11. At all times relevant to the matters alleged herein, the individual defendants, and each of them, as officers and directors of the defendant Hilton Hotels Corporation, owed a fiduciary duty to said Corporation and to its shareholders, and said fiduciary obligation required that the officers and directors protect, preserve, and advance the welfare of the defendant Corporation and its shareholders, act in the best interests of the Corporation and its shareholders, and refrain from acts and doings whereby the personal benefit of the directors and officers, or any one or more of them, would be enhanced to the detriment of the defendant Corporation and its shareholders.

12. Contrary to their fiduciary duty and obligation, the individual defendants engaged in the scheme and plan and deceptive devices and practices set forth above, all in vio-

lation of Section 10(b) of the Securities Exchange Act of 1934 and the Rules and Regulations promulgated thereunder by the Securities and Exchange Commission, for the purpose of advancing their own personal interests, and particularly the personal financial interests of defendants Conrad N. Hilton and Henry Crown, at the expense of the defendant Corporation and its shareholders. By such 23 illegal and fraudulent means, the individual defendants caused the defendant Corporation to pay out and waste corporate funds in excess of \$8,564,000, of which total the individual defendants personally took and received approximately \$2,890,000. To the extent of \$8,564,000 the defendant Corporation has been defrauded, and to the extent of \$2,890,000 said defrauding of the defendant Corporation has directly benefited the individual defendants.

13. No demand has been made on the defendant Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

14. The above-described device, scheme, and plan was carried out and put into effect by the individual defendants by and through the use of the United States mails 24 and other means of communication and transmission of information in interstate commerce, including the telephone.

Wherefore, plaintiff prays that judgment be entered against the individual defendants, jointly and severally, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of their illegal acts in violation of Section 10(b) of the Securities and Exchange Act of 1934 and the Rules and Regulations promulgated thereunder, namely, in the amount of \$8,654,245.81, together with interest thereon from January 24, 1963, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

25

Count II.

Plaintiff complains of the defendants, except the defendant Hilton Credit Corporation, and each of them, as follows:

1.-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

4. The claim herein pleaded arises under Section 17(a) of the Securities Act of 1933, 15 U. S. C. § 77q(a) which reads as follows:

Sec. 17. (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the

statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

5. Jurisdiction of this matter is conferred on this Court by Section 22 of the Securities Act of 1933, 15 U. S. C. Section 77z; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U. S. C. Section 1337.

6.-14. Plaintiff realleges paragraphs 6 to 14 inclusive of Count I as paragraphs 6 to 14 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

Wherefore, plaintiff prays that judgment be entered against the individual defendants, jointly and severally, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of their illegal acts in violation of Section 17(a) of the Securities Act of 1933, namely in the amount of \$8,654,245.81, together with interest from January 25, 1963, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

27

Count III.

Plaintiff complains of the defendants, except the defendant Hilton Credit Corporation, and each of them, as follows:

1.-3. Plaintiff réalleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

4. The claim herein pleaded arises under Sections

9(a) (4) and 9(e) of the Securities Exchange Act of 1934, 15 U. S. C. §§ 77i(4) and 77e which read as follows:

Sec. 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(e) Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

5.-7. Plaintiff realleges paragraphs 5 to 7 inclusive of Count I as paragraphs 5 to 7 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

8. Said explanation was false and misleading, and was known by the individual defendants to be false and misleading, in respects indicated hereinafter. Said false and misleading statement, as well as other false and misleading statements contained in the documents (Exhibits "A", "B", "C" and "D") which are hereinafter specifically set forth, were integral parts of a plan and scheme designed to cause the defendant Corporation to purchase shares of stock and to deceive the shareholders, other than the individual defendants, into falsely believing that the purchase of 300,000 shares of stock by the Corporation would inure to the benefit of the Corporation, all in violation of Sections 9(a) (4) and 9(e) of the Securities Exchange Act of 1934, in that:

(a) The individual defendants represented that the shares to be purchased were equal in number to shares previously issued in connection with certain properties no longer owned by the defendant Corporation. In fact, however, the number of shares outstanding in December 1962 which were properly countable as shares previously issued for the acquisition of properties thereafter disposed of did not exceed approximately 150,000 shares, not 300,000 shares as represented by the individual defendants.

(b) The individual defendants represented that "the closing price of [the Corporation's] stock on the New York Stock Exchange at the close of business on the date preceding this offer was \$28.125" and described this figure as the "current market price". The individual defendants therefore indicated that tenders of shares could be made at any price between \$28.125

and \$29.50 per share. Said representation was misleading in that the individual defendants omitted to disclose that they had engaged in acts and transactions, including the purchases of shares and transmission or "leaking" of information about the tender prices, designed to peg, fix, rig, and artificially inflate the price of the stock, in order to achieve, temporarily, in the period immediately prior to December 17, a price on the market at the lower end of the scale of prices the individual defendants proposed to use for the purposes of their scheme and plan. During the first quarter of 1962, the price per share of the Corporation's common stock in stock exchange transactions ranged from \$29 $\frac{3}{4}$ to \$33 $\frac{1}{2}$; during the second quarter, the range was \$23 $\frac{1}{4}$ to \$30 $\frac{3}{4}$; during the third quarter, the range was \$23 to \$25 $\frac{1}{2}$; and during October and November, 1962, the range was \$22 to \$25 $\frac{1}{4}$. For the six-month period prior to December 17, 1962, the price of the defendant Corporation's stock exceeded \$28 per share on only two trading dates, one on December 14, 1962, and the other, two days earlier. During the month prior to December 10, 1962, the price of the stock did not even momentarily reach \$27 per share. After consummation of the scheme and plan on January 24, 1963, the price of the stock dropped steadily over several months to a current price of \$15 $\frac{1}{4}$ to \$16 per share.

(c) In making said representations, the individual defendants did not disclose that financial information available to them as officers and directors made it apparent that the earnings of the defendant Corporation were declining and that, at subsequent public announcements of relevant financial information of the Corporation, the market price of the Corporation's shares was most likely to fall by reason of reduced

earnings. Operating profits for 1962 were less than 80% of operating profits for 1961, and in fact were the lowest such profits since 1954. Thereafter, profits for the first quarter of 1963 were approximately 40% below profits for the first quarter of 1962.

(d) The letter of January 7, 1963 (Exhibit "D" attached hereto), which accompanied the Notice of the amendment of the original offer, said Notice being dated January 7, 1963 (Exhibit "C" attached hereto), was deliberately written for the purpose of leading the shareholders of the defendant Corporation into the false belief that the Corporation was prospering, that its prospects were good, and that various financial transactions mentioned therein were constantly improving its position, earnings, etc. Said letter was
32 intended to create a false sense of well-being, thereby to induce shareholders to believe that the officers and directors of the defendant Corporation, including the individual defendants, were acting wisely and in the interests of the Corporation in causing the Corporation to purchase 300,000 shares, and thereby allaying concern over the disposition of shares by the individual defendants. Said letter was further designed falsely to make it appear that the defendant Corporation would in fact be harmed and its interests prejudiced if enough shares, including shares of officers and directors, were not tendered to make it possible to purchase 300,000 shares.

(e) The Notice dated January 7, 1963 (Exhibit "C" attached hereto), which advised the shareholders of certain modifications in the original offer of December 17, 1962 (Exhibit "B" attached hereto), contained the following statement:

"2. Mr. Conrad N. Hilton, Chairman of the Board, President, and the principal shareholder of

the corporation, has advised the corporation that he will tender 85,847 shares of common stock pursuant to the terms of the Offer, which is the number of shares of common stock he may have been required to tender under the terms of the offer."

33 Said statement was false and misleading, and was known to the individual defendants to be false and misleading, in that it advised the shareholders that defendant Conrad N. Hilton, although entitled to offer more than ten per cent of his stockholdings by virtue of the January 7, 1963 amendment to the offer, would still offer only ten per cent, namely 85,847 shares. In fact, the total of 85,847 shares was in excess of ten per cent of the holdings of defendant Conrad N. Hilton on January 7, 1963 and on December 17, 1962. Said statement was further false and misleading in that it did not disclose that defendant Conrad N. Hilton had agreed to purchase over 101,000 shares from defendant Henry Crown, from entities controlled by defendant Crown, from members of defendant Crown's family, and from trusts for the benefit of members of defendant Crown's family. Failure to disclose this circumstance helped to conceal the extent to which the plan and scheme and its implementation were intended to inure to the benefit of defendant Henry Crown and his family.

9. As the result of the foregoing false and misleading representations, the defendant Corporation was caused by the individual defendants to purchase a total of 300,000 shares of its common stock at a total price of \$8,564,245.81. Included in said shares were at least 101,650 shares purchased, by the use of the United States mails and other
34 means of transportation and communication in interstate commerce, from the officers and directors of the

defendant Corporation, including shares from the individual defendants as follows:

Conrad N. Hilton	85,847
Sam D. Young	353
Vernon Herndon	1,147
Herbert C. Blunck	393
Charles L. Fletcher	4,100
Robert A. Groves	6,000
Joseph A. Harper	2,150

Out of the \$8,564,245.81 paid by the Corporation, the individual defendants personally took and received approximately \$2,890,000.

10. No demand has been made on the defendant Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

35 11. The above-described device, scheme, and plan was carried out and put into effect by the individual defendants by and through the use of the United States mails and other means of communication and transmission of information in interstate commerce, including the telephone.

Wherefore, plaintiff prays that judgment be entered against the individual defendants, jointly and severally, for the damages sustained by the defendant Hilton Hotels

Corporation by virtue of their illegal acts in violation of Sections 9(a)(4) and 9(e) of the Securities Act of 1933, namely in the amount of \$8,564,245.81, together with interest thereon from January 25, 1963, that plaintiff be awarded her costs, and the plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

36

Count IV.

Plaintiff complains of the defendants Conrad N. Hilton, Sam D. Young, Vernon Herndon, Herbert C. Blunck, Charles L. Fletcher, Robert A. Groves and Joseph A. Harper, and of the defendant Hilton Hotels Corporation, as follows:

1-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count precisely as though said paragraphs were set out in full herein.

4. The claim herein pleaded arises under Section 12(2) of the Securities Act of 1933, 15 U. S. C. Section 771(2), which reads as follows:

Sec. 12. Any person who—

(2) offers or sells a security (whether or not exempted by the provisions of Section 3, other than paragraph (2) of subsection (a) thereof), by the use of any means or instruments of transportation of communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did

not know, and in the exercise of reasonable care could not have known, of such untruth or omission shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the
37 amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

5. Jurisdiction of this matter is conferred on this Court by Section 22 of the Securities Act of 1933, 15 U. S. C. Section 77z; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U. S. C. Section 1337.

6.-7. Plaintiff realleges paragraphs 6 and 7 of Count I as paragraphs 6 and 7 of this Count precisely as though said paragraphs were set out in full herein.

8. The various communications made to the defendant Corporation's shareholders, and referred to herein as Exhibits "A", "B", "C" and "D", contain both untrue statements and statements which were misleading because of their failure to state certain material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. Said untruths and omissions, which were known to the individual defendants but not to the other shareholders of defendant Corporation, were caused to be communicated by the individual defendants to the Corporation's shareholders in order to enable certain of said individual defendants to dispose of large amounts of the Corporation's common stock at prices
above the market price by selling said stock to the de-
38 fendant Corporation. Said sales were in violation of the provisions of Section 12(2) of the Securities Act of 1933 in that:

(a) The individual defendants were engaged in a plan and scheme to make it possible for defendant

Conrad N. Hilton and other officers and directors to dispose of shares in the defendant Corporation at prices more favorable than they could obtain in the market, at a time when they knew or should have known that the business affairs of the defendant Corporation would shortly lead to a substantial drop in the value of the shares. Furthermore, the individual defendants were engaged in a plan and scheme to make it possible for defendant Henry Crown to dispose of large holdings in the common stock of the defendant Corporation held by him individually by other entities controlled by him, by members of his family, and by trusts established for various members of his family, as to some of which he was grantor, beneficiary, or remainderman, at prices above the market prices for such stock, under circumstances whereby such disposal of stock would not be known publicly.

39 (b) The individual defendants acted in such a way as to conceal from the mass of its stockholders the true purpose of the offer to purchase described above, and in such a way as to make it appear that it was to the Corporation's advantage to effect such a purchase of approximately 10 per cent of the outstanding shares. In fact, such a purchase was contrary to the defendant Corporation's interest since the effect of it was to reduce working capital by approximately \$8,564,000 at a time when the Corporation's debts and commitments were increasing. By the end of 1962 the Corporation's long-term debt, on a consolidated basis, amounted by more than \$133,000,000 and exceeded the amount of long-term debt at the end of 1961 by more than \$50,000,000. By the end of 1962, the Corporation had invested more than \$197,000,000 in properties, plant, and equipment, or almost \$50,000,000 over and above its investment at the end of 1961 after subtract-

ing dispositions and depreciation during the year. By the end of 1962, the Corporation had outstanding construction commitments in excess of \$15,000,000. The Corporation also had issued guarantees on various obligations and transactions exposing itself to possible liabilities in excess of \$20,000,000. By the end of 1962 the current assets of the Corporation had been reduced by \$9,500,000 compared to year-end 1961, while current liabilities had increased by more than \$2,500,000. Furthermore, the Corporation, at the end of 1962, announced plans to invest an additional \$21,000,000 in new properties during 1963. These facts negated any pretense of contraction of activities and of a corporate need to eliminate the Corporation's own outstanding stock by using allegedly excess funds not required in the business.

(c) The individual defendants represented that the shares to be purchased were equal in number to shares previously issued in connection with certain properties no longer owned by the defendant Corporation. In fact, however, the number of shares properly countable as shares previously issued for the acquisition of properties thereafter disposed of did not exceed approximately 150,000 shares, not 300,000 shares as represented by the individual defendants.

(d) The individual defendants represented that "the closing price of [the Corporation's] stock on the New York Stock Exchange at the close of business on the date preceding this offer was \$28.125" and described this figure as the "current market price". The individual defendants therefore indicated that tenders of shares could be made at any price between \$28.125 and \$29.50 per share. Said representation was misleading in that the individual defendants

omitted to disclose that they had engaged in acts and transactions, including the purchases of shares and transmission or "leaking" of information about the tender prices, designed to peg, fix, rig, and artificially inflate the price of the stock, in order to achieve temporarily, in the period of time immediately prior to December 17, 1962, a price on the market at the lower end of the scale of prices the individual defendants proposed to use for the purposes of their scheme and plan. During the first quarter of 1962, the price per share of the Corporation's common stock in stock exchange transactions ranged from \$29 $\frac{3}{8}$ to \$33 $\frac{3}{8}$; during the second quarter, the range was \$23 $\frac{1}{2}$ to \$30 $\frac{1}{4}$; during the third quarter, the range was \$23 to \$25 $\frac{1}{2}$; and during October and November, 1962, the range was 42 \$22 to \$25 $\frac{1}{2}$. For the six-month period prior to December 17, 1962, the price of the defendant Corporation's stock exceeded \$28 per share on only two trading dates, one on December 14, 1962, and the other, two days earlier. During the month prior to December 10, 1962, the price of the stock did not even momentarily reach \$27 per share. After consummation of the scheme and plan on January 24, 1963, the price of the stock dropped steadily over several months to a current price of \$15 $\frac{1}{2}$ to \$16 per share.

(e) In making said representations, the individual defendants did not disclose that financial information available to them as officers and directors made it apparent that the earnings of the defendant Corporation were declining and that, at subsequent public announcements of relevant financial information of the Corporation, the market price of the defendant Corporation's shares was most likely to fall by reason of reduced earnings. Operating profits for 1962 were

less than 80% of operating profits for 1961, and in
43 fact were the lowest such profits since 1954. There-
after, profits for the first quarter of 1963 were approxi-
mately 40% below profits for the first quarter of 1962.

(f) The letter of January 7, 1963 (Exhibit "D" attached hereto), which accompanied the Notice of the amendment of the original offer, said Notice being dated January 7, 1963 (Exhibit "C" attached hereto), was deliberately written for the purpose of leading the shareholders of the defendant Corporation into the false belief that the Corporation was prospering, that its prospects were good, and that various financial transactions mentioned therein were constantly improving its position, earnings, etc. Said letter was intended to create a false sense of well-being, thereby to induce shareholders to believe that the officers and directors of the defendant Corporation, including the individual defendants, were acting wisely and in the interests of the Corporation in causing the Corporation to purchase 300,000 shares, and thereby allaying concern over the disposition of shares by the individual defendants. Said letter was further designed falsely to make it appear that the defendant Corporation
44 would in fact be harmed and its interests prejudiced if enough shares, including shares of officers and directors, were not tendered to make it possible to purchase 300,000 shares.

(g) The Notice dated January 7, 1963 (Exhibit "C" attached hereto), which advised the shareholders of certain modifications in the original offer of December 17, 1962 (Exhibit "B" attached hereto), contained the following statement:

"2. Mr. Conrad N. Hilton, Chairman of the Board, President, and the principal shareholder

of the corporation, has advised the corporation that he will tender 85,847 shares of common stock pursuant to the terms of the Offer, which is the number of shares of common stock he may have been required to tender under the terms of the offer."

Said statement was false and misleading, and was known to the individual defendants to be false and misleading, in that it advised the shareholders that defendant Conrad N. Hilton, although entitled to offer more than ten per cent of his stockholdings by virtue of the January 7, 1963 amendment to the offer, would still offer only ten per cent, namely, 85,847 shares. In fact, the total of 85,847 shares was in excess of ten per cent of the holdings of defendant Conrad N. Hilton on January 7, 1963 and on December 17, 1962. Said statement was further false and misleading in that it did not disclose that defendant Conrad N. Hilton had agreed to purchase over 101,000 shares from defendant Henry Crown, from entities controlled by defendant Crown, from members of defendant Crown's family, and from trusts for the benefit of members of defendant Crown's family. Failure to disclose this circumstance helped to conceal the extent to which the plan and scheme and its implementation were intended to inure to the benefit of defendant Henry Crown and his family.

9. As the result of the foregoing false and misleading statements, the defendant Corporation was caused by the individual defendants to purchase a total of 300,000 shares of its common stock for a total price of \$8,564,245.81. Included in said shares were at least 101,650 shares sold to said Corporation, by the use of the United States mails and others means of transportation and communication

46 in interstate commerce, by the officers and directors of the defendant Corporation, including shares sold to the Corporation by the individual defendants as follows:

Conrad N. Hilton	85,847
Sam D. Young	353
Vernon Herndon	1,147
Herbert C. Blunck	393
Charles L. Fletcher	4,100
Robert A. Groves	6,000
Joseph A. Harper	2,150

Out of the \$8,564,245.81 paid by the Corporation, the individual defendants personally took and received approximately \$2,890,000.00.

10. No demand has been made on the defendant Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

Wherefore, plaintiff prays that judgment be entered against each of the individual defendants who sold
47 stock to the Corporation, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of such sale of said Corporation's common stock in violation of Section 12(2) of the Securities Act of 1933, namely, in the amount of the consideration paid by the Corporation

to each individual defendant for the stock so sold, upon tender of such stock by the Corporation to the vendor, together with interest on such amount of consideration from January 25, 1963, that plaintiff be awarded her costs, and the plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

48

Count V.

Plaintiff complains of defendants Hilton Hotels Corporation, Conrad N. Hilton, Henry Crown, Robert J. Caverly, Robert P. Williford, Spearl Ellison, Y. Frank Freeman, Willard W. Keith, Lawrence Stern, Sam D. Young, Fritz B. Burns and Benno Bechhold, as follows:

1-2. Plaintiff realleges paragraphs 1 and 2 of Count I as paragraphs 1 and 2 of this Count precisely as though said paragraphs were set out in full herein.

3. The defendants Conrad N. Hilton, Benno Bechhold, Fritz B. Burns, Spearl Ellison, Y. Frank Freeman and Willard W. Keith reside in and are citizens of the State of California. The defendants Henry Crown, Robert J. Caverly, Robert P. Williford and Lawrence Stern reside in and are citizens of the State of Illinois. The defendant Sam D. Young resides in and is a citizen of the State of Texas. Each of said defendants is, and at all times relevant to the matters alleged herein was, a director, or both an officer and director, of defendant Hilton Hotels Corporation, as follows:

49 Conrad N. Hilton, Director, Chairman of the Board, and President.

Robert P. Williford, Director, Vice Chairman of the Board.

Robert J. Caverly, Director, Executive Vice President.
Spearl Ellison, Director, Senior Vice President.

Henry Crown, Director, Vice President.
Benno M. Bechhold, Director.
Y. Frank Freeman, Director.
Willard W. Keith, Director.
Lawrence Stern, Director.
Sam D. Young, Director.
Fritz B. Burns, Director.

Defendant Conrad N. Hilton, in addition to being an officer and director, is the largest single holder of shares of common stock in the defendant Corporation, holding approximately twenty-three per cent of the outstanding shares.

50 4. The claim herein pleaded arises under the General Corporation Law of the State of Delaware, Title 8 of the Delaware Code. Jurisdiction of this matter is conferred on this Court by virtue of diversity of citizenship of the parties. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.

5. This action is not a collusive one instituted for the purpose of conferring upon a Court of the United States jurisdiction of a cause of action over which it would not otherwise have jurisdiction.

6-11. Plaintiff realleges paragraphs 6, 7, 8, 9, 10 and 11 of Count I as paragraphs 6 to 11 inclusive of this Count precisely as though said paragraphs were set out in full herein, said allegations being herein included only with respect to the defendants named as defendants in this Count V.

12. Contrary to their fiduciary obligations, the individual defendants engaged in the scheme and plan and
51 deceptive devices and practices set forth above for the purpose of advancing their own personal interests, and particularly the personal financial interests of defendants Conrad N. Hilton and Henry Crown, at the expense of the defendant Corporation and its shareholders. By such illegal and fraudulent means, the individual defend-

ants caused the defendant Corporation to pay out and waste corporate funds in excess of \$8,564,000, of which total the individual defendants named in this Count V personally took and received at least \$2,400,000. To the extent of \$8,564,000 the defendant Corporation has been defrauded, and to the extent of at least \$2,400,000 said defrauding of the defendant Corporation has directly benefited the individual defendants named in this Count V.

13. Plaintiff realleges paragraph 13 of Count I as paragraph 13 of this Count precisely as though said paragraph were set out in full herein.

14. The above-described device, scheme, and plan was carried out by acts and measures taken at the Corporation's principal place of business, 720 South Michigan Avenue, Chicago, Illinois. Thus, the letters and offer of December 17, 1962 and January 7, 1963 (Exhibits "A", 52 "B", "C" and "D") were issued by the Corporation at its Chicago office. Publicity releases in connection with the plan, scheme, and device were similarly issued at Chicago. One of the two designated depositories for shares tendered pursuant to the offer was the American National Bank and Trust Company of Chicago, 33 North LaSalle Street, Chicago, Illinois, and shares were tendered to said depository.

Wherefore, plaintiff prays that the individual defendants be required to account for all losses and damages sustained by the Corporation and for all profits, gains, and benefits derived by such defendants as a result of their illegal acts and breaches of fiduciary duties, together with interest thereon, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

Plaintiff complains of defendants Hilton Hotels Corporation, Conrad N. Hilton, Henry Crown, Robert J. Caverly, Robert P. Williford, Spearl Ellison, Y. Frank Freeman, Willard W. Keith, Lawrence Stern, Sam D. Young, Fritz B. Burns, and Benno Bechhold, as follows:

1.-2. Plaintiff realleges paragraphs 1 and 2 of Count I as paragraphs 1 and 2 of this Count precisely as though said paragraphs were set out in full herein.

3. The defendants Conrad N. Hilton, Benno Bechhold, Fritz B. Burns, Spearl Ellison, Y. Frank Freeman and Willard W. Keith reside in and are citizens of the State of California. The defendants Henry Crown, Robert J. Caverly, Robert P. Williford and Lawrence Stern reside in and are citizens of the State of Illinois. The defendant Sam D. Young resides in and is a citizen of the State of Texas. Each of said defendants is, and at all times relevant to the matters alleged herein was, a director, or both an officer and director, of defendant Hilton Hotels Corporation, as follows:

Conrad N. Hilton, Director, Chairman of the Board, and President.

Robert J. Caverly, Director, Executive Vice President.

Spearl Ellison, Director, Senior Vice President.

Henry Crown, Director, Vice President.

Benno M. Bechhold, Director.

Y. Frank Freeman, Director.

Willard W. Keith, Director.

Lawrence Stern, Director.

Sam D. Young, Director.

Fritz B. Burns, Director.

Defendant Conrad N. Hilton, in addition to being an officer and director, is the largest single holder of shares of common stock in the defendant Corporation, holding approximately twenty-three percent of the outstanding shares.

55 4. The claim herein pleaded arises under the General Corporation Law of the State of Delaware, Title 8 of the Delaware Code. Jurisdiction of this matter is conferred on this Court by virtue of diversity of citizenship of the parties. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.

5. This action is not a collusive one instituted for the purpose of conferring upon a Court of the United States jurisdiction of a cause of action over which it would not otherwise have jurisdiction.

6-11. Plaintiff realleges paragraphs 6, 7, 8, 10, and 11 of Count I as paragraphs 6 to 11 inclusive of this Count precisely as though said paragraphs were set out in full herein, said allegations being herein included only with respect to the defendants named as defendants in this Count VI.

12. Contrary to their fiduciary obligations, the individual defendants engaged in the scheme and plan and deceptive devices and practices set forth above for the purpose of advancing their own personal interests, and particularly the personal financial interests of defendants Conrad N. Hilton and Henry Crown, at the expense of the defendant Corporation and its shareholders. By such illegal and fraudulent means, the individual defendants caused the defendant Corporation to pay out and waste corporate funds in excess of \$8,564,000, of which total the individual defendants named in this Count VI personally took and received at least \$2,400,000. To the extent of \$8,564,000 the defendant Corporation has been defrauded, and to the extent of at least \$2,400,000 said defrauding of the defendant Corporation has directly benefited the individual defendants named in this Count VI.

13. Plaintiff realleges paragraph 13 of Count I as paragraph 13 of this Count precisely as though said paragraph were set out in full herein.

14. The foregoing plan, scheme, and device, which involved the retirement of a substantial amount of common stock purchased by the Corporation from its stockholders, constituted a reduction of capital of the Corporation under Section 244 of the General Corporation Law of the State of Delaware. Section 244(b) of the General Corporation Law of the State of Delaware defines as a reduction of capital, among other transactions, "the purchase of shares for retirement, either pro rata from all holders of shares of that class of stock or by purchasing such shares from time to time in the open market or at private sale". The individual defendants acted wrongfully and illegally in ignoring and violating the requirements of Section 244 in the following respects:

(a) The plan, scheme, and device to cause the Corporation to purchase its shares pursuant to the Letters and Offer set forth in Exhibits "A", "B", "C" and "D" attached hereto was not approved by written consent of the shareholders of the Corporation or by the vote of a majority of the shares at a meeting of stockholders called for that purpose;

(b) The certificate required to be filed with the Secretary of State of the State of Delaware and thereafter to be recorded was not filed or recorded;

(c) The price or prices at which the purchase of shares was to be effected was neither fixed nor approved by stockholders;

58 (d) The requirement for publication of notice of the reduction of capital was not met in any respect.

15. By failing to comply with the requirements of Section 244 of the General Corporation Law of the State of Delaware that the above-described plan, scheme, and device be submitted to a vote of shareholders at a meeting upon at least ten days notice and that the price or prices

for purchase of stock be approved by the shareholders, the individual defendants were also able to avoid compliance with the Proxy Rules (Regulation 14) under the Securities Exchange Act of 1934; these rules compel the disclosure of all material facts in connection with a transaction proposed for shareholders' approval.

16. By failing to comply with said requirements of Section 244 of the General Corporation Law of the State of Delaware, the individual defendants caused the defendant Corporation to adopt and carry out said plan, scheme, and device by action solely of the Corporation's board of directors, which action was taken upon the advice and votes of directors who were advancing their personal financial interests at the expense of the defendant Corporation and its stockholders.

59 17. The above-described device, scheme, and plan was carried out by acts and measures taken at the Corporation's principal place of business, 720 South Michigan Avenue, Chicago, Illinois. Thus, the letters and offer of December 17, 1962 and January 7, 1963 (Exhibit "A", "B", "C" and "D") were issued by the Corporation at its Chicago office. Publicity releases in connection with the plan, scheme, and device were similarly issued at Chicago. One of the two designated depositaries for shares tendered pursuant to the offer was the American National Bank and Trust Company of Chicago, 33 North LaSalle Street, Chicago, Illinois, and shares were tendered to said depositary.

Wherefore, plaintiff prays that this Court grant equitable relief to set aside the wrongful and illegal acts and transactions carried out and caused to be carried out by the individual defendants and to compel said defendants to make restitution for all losses and damages sustained by the Corporation as a result of these illegal and wrongful acts,

together with interest thereon; that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

60

Count VII.

Plaintiff complains of the defendants, and each of them, as follows:

1.-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 of this Count, precisely as though said paragraphs had been set out in full herein.

4. Defendant Hilton Credit Corporation is a Delaware Corporation which maintains its principal place of business and its executive offices in the State of California; said defendant transacts business in the Northern District of Illinois. Defendant Hilton Credit Corporation engages in the business of servicing, processing and purchasing charge accounts, and buys, as a principal part of its business, the accounts receivable of the defendant Hilton Hotels Corporation.

5. At all times relevant to the matters alleged herein, a majority of the members of the board of directors of defendant Hilton Credit Corporation has been made up of officers and directors of defendant Hilton Hotels Corporation. These persons, through their domination and control over the affairs of Hilton Hotels Corporation, similarly have dominated and controlled the affairs of defendant Hilton Credit Corporation; their official positions were and are as follows:

Name	Position held with Hilton Hotels Corp.	Position held with Hilton Credit Corp.
Conrad N. Hilton	Director, Chairman of the Board, President	Director
Benno M. Bechhold	Director	Director, President
Charles L. Fletcher	Vice President, Treasurer	Director, Executive Vice President
Robert P. Williford	Director, Vice Chairman of the Board of Directors	Director
Henry Crown	Director, Vice President	Director
Horace C. Flanigan	Director	Director
Barron Hilton	Vice President	Director

Before February of 1963, defendant Hilton Hotels Corporation owned 34% of the outstanding stock of defendant Hilton Credit Corporation, and the individual defendants collectively owned more than 20% of the outstanding stock of Hilton Credit Corporation.

6. The claim herein pleaded arises under Section 10(b) of the Securities Exchange Act of 1934, 15 U. S. C. § 78j(b), and the Rules of the Securities and Exchange Commission adopted thereunder. Section 10(b) of the Securities Exchange Act of 1934 reads as follows:

Sec. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(b) to use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered,

any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Rule 10b-5 of the Rules adopted by the Securities Exchange Commission under Section 10 of the Act of 1934 reads as follows:

Rule 10b-5. Employment of Manipulative and Deceptive Devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange,

63 (1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

7. Jurisdiction of this matter is conferred on this Court by Section 27 of the Securities Exchange Act of 1934, 15 U. S. C. § 78aa; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U. S. C. § 1337.

8. In January of 1963, the individual defendants, as the officers and directors having control over the affairs of both the defendant Hilton Hotels Corporation and the defendant Hilton Credit Corporation, with the approval, cooperation and assistance of the Hilton Credit Corporation, caused a document entitled "Letter of Transmittal", and a document entitled "Offer", to be transmitted by de-

defendant Hilton Hotels Corporation through the United States mails to the shareholders of defendant Hilton Credit

64 Corporation, wherein the defendant Hilton Hotels Corporation, for a limited period of time and under certain specified conditions, offered to purchase 1,390,706 shares of the Credit Corporation's outstanding \$1.00 par value common stock for a price of \$3.25 per share. True and correct copies of the documents mentioned above, namely the Letter of Transmittal dated January 15, 1963, and the Offer dated January 15, 1963, are attached hereto and made a part hereof by reference thereto as Exhibits "E" and "F", respectively.

9. In making the offer above described, the individual defendants caused the defendant Hotels Corporation to state in writing, in the Letter of Transmittal of January 15, 1963 (Exhibit "E" attached hereto), which document was transmitted through the United States mails to shareholders of the defendant Credit Corporation, the reasons why the offer was being made, as follows:

As you know, Hilton Credit is obligated on notes to various banks in the aggregate amount of \$12,150,000, which mature under their respective terms on February 28, 1963. Under the terms of an Extension Agreement, dated February 9, 1962 with said banks, Hilton Credit has the option to extend the maturities of said notes to February 28, 1964, provided, among other things, that the \$5,000,000 Subordinated Notes, due March 1, 1963, have been extended to a date not earlier than March 1, 1964. Hilton Hotels holds \$1,900,000 of said Subordinated Notes and has agreed to extend the maturity of the same until March 1, 1964, if all of the other holders of said Subordinated Notes similarly agree. Although all of the other
65 holders of such Subordinated Notes have not agreed to extend their maturity as yet, it is anticipated that said holders will so agree to extend the maturity of the Subordinated Notes until March 1, 1964. Accord-

ingly, it is anticipated that the maturities of the bank loans will be extended to February 28, 1964. There is no provision for the extension of the bank loans or the Subordinated Notes after February 28, 1964 and March 1, 1964, respectively. As a result, Hilton feels that it may be required to take a major role in any refinancing of such indebtedness.

Under the circumstances, the Board of Directors of Hilton has authorized the making of an offer to Hilton Credit Stockholders to purchase 80% of the outstanding shares of Common Stock of Hilton Credit, including the shares already owned by Hilton, for \$3.25 per share upon the terms and conditions set forth in the enclosed formal offer. Hilton has no intention of merging with Hilton Credit.

No other statement of reasons appears in any of the above-designated documents.

10. Said explanation of the purpose of defendant Hilton Hotels Corporation in making the aforesaid offer was false and misleading, and was known by the individual defendants to be false and misleading, in the respects indicated hereinafter. Said false and misleading statement, the Offer to purchase 1,390,706 shares of common stock described above, and the Letter of Transmittal specified above which were sent out by the individual defendants and the defendant Hilton Hotels Corporation to the 66 shareholders of defendant Hilton Credit Corporation were integral parts of a manipulative and deceptive device or contrivance and of a scheme to defraud, and constituted acts and practices carried out in the course of the execution of such device and scheme, all in violation of the provisions of Section 10(b) of the Securities Exchange Act of 1934 and the Rules of the Securities and Exchange Commission promulgated thereunder, in that—

(a) The individual defendants were engaged in a plan and scheme to make it possible for defendant Con-

rad N. Hilton and other officers and directors of the two corporations to dispose of shares in the defendant Hilton Credit Corporation at a price more favorable than they could obtain in the market. Furthermore, the individual defendants were engaged in a plan and scheme to make it possible for defendants Henry Crown and Barron Hilton, the son of defendant Conrad N. Hilton, to dispose of large holdings in the common stock of the defendant Hilton Credit Corporation held by them at a price above the market price for such stock;

- 67 (b) The individual defendants acted in such a way as to conceal from defendant Hilton Hotels Corporation and from its stockholders the true purpose of the offer to purchase described above, and in such a way as to make it appear that it was to said Hotels Corporation's advantage to effect such a purchase of Hilton Credit Corporation shares. In fact, such a purchase was contrary to the interests of the defendant Hilton Hotels Corporation since the effect of it was to reduce working capital by approximately \$3,441,000 at a time when said Corporation's debt and the need for working capital was increasing, to cause Hilton Hotels Corporation to pay an excessive price for the stock of Hilton Credit Corporation, and to cause Hilton Hotels Corporation to take a larger role in underwriting Hilton Credit Corporation's debts, liabilities, and losses. At the end of 1962, Hilton Credit Corporation had losses totalling more than \$8,500,000 and a capital deficit of more than \$1,400,000. Said Credit Corporation owed \$12,000,000 to banks and other financial institutions. It also was indebted to defendants
- 68 Conrad N. Hilton, Henry Crown, Barron Hilton, Hilton Hotels Corporation, and others in the amount of \$5,000,000 on notes payable in 1963.

(c) The individual defendants represented that on January 10, 1963 the market price of Hilton Credit Corporation stock was between \$3.125 and \$3.50 per share. Said representation was misleading in that the individual defendants did not disclose that they had engaged in acts and transactions, including the transmission or "leaking" of information about the proposed tender price, and the purchase of or bidding on shares, designed to peg, fix, rig, and artificially inflate that price in order to achieve temporarily, in the period of time immediately prior to January 15, 1963, market price quotations close to the price the individual defendants proposed to use for the purposes of their scheme and plan. During the two years prior to 1961, the stock of Hilton Credit Corporation was traded over-the-counter at a range of prices of \$4½ to \$15 per share. During 1961, the range was \$2½ to \$5½; during 1962, the range was \$1½ to \$3½. During December 1962, the month immediately preceding the offer and tenders, the range of prices was \$2½ Bid—
69 \$3½ Asked. Among other devices for causing a temporary artificial price rise in the stock of Hilton Credit Corporation at the end of January 1963, the individual defendants announced to stockholders of Hilton Hotels Corporation, by letter of January 7, 1963 (Exhibit "D" attached hereto), that on January 3, 1963, the board of directors of Hilton Hotels Corporation had authorized a tender plan to purchase shares of Hilton Credit Corporation at a price of \$3.25 per share. This announcement immediately caused the price of the stock to rise sharply.

(d) The proposal set forth in the Letter of January 15, 1963 (Exhibit "E" attached hereto) from Hilton Hotels Corporation to stockholders of Hilton Credit Corporation stated that Hilton Hotels Corpora-

tion had been authorized to purchase 80% of the outstanding shares of Hilton Credit Corporation, including shares already owned by Hilton Hotels Corporation. A similar objective was set forth in the Offer of January 15, 1963 (Exhibit "F" attached hereto); Hilton Hotels Corporation was not obligated to purchase any shares if 80% could not be obtained. Notwithstanding these representations and conditions, Hilton Hotels Corporation in fact was caused by the individual defendants to purchase a lesser amount of shares, which, together with previously-owned shares, resulted in the ownership of only 67% of the outstanding shares of Hilton Credit Corporation. The defendant Hilton Hotels Corporation was thereby caused to expend great amounts of money in the interests solely of the individual defendants, without securing the significant federal income tax advantages which 80% ownership would have provided.

(e) The interests of the individual defendants Conrad N. Hilton, Henry Crown, and others as creditors of Hilton Credit Corporation were concealed in the Letter and Offer of January 15, 1963 (Exhibits "B" and "F" attached hereto) and in the Letter of January 7, 1963 (Exhibit "D" attached hereto). When the stockholders of both companies were informed that Hilton Hotels Corporation was to be put into a position of greater responsibility for the financial affairs and liabilities of Hilton Credit Corporation, it was not disclosed that this increased responsibility and financial backing would inure in good part to the personal advantage of those individual defendants who, as creditors, faced serious collection problems.

(f) The individual defendants could not have otherwise sold the stock of Hilton Credit Corporation which they sold to Hilton Hotels Corporation pursuant to

the offer except by a secondary public offering, with all of the high costs attendant thereupon, with full disclosure of material facts by way of registration in conformity to the federal security laws and rules and regulations, at a price far below the price specified in the offer, and at a time when the market for public offerings was unfavorable. It was the purpose and intent of the individual defendants, by their illegal plan, scheme, and contrivance, to avoid any such disadvantageous consequences to their own personal interests.

11. As the result of said manipulative and deceptive device and scheme, and its carrying out pursuant to the false and misleading representations and deceptive actions specified above, the defendant Hilton Hotels Corporation was caused by the individual defendants to purchase a
72 total of 1,058,997 shares of Hilton Credit Corporation common stock at a total price of \$3,441,740.25. Included in said shares were 631,262 shares sold to said Corporation through the use of the United States mails and other means of transportation and communication in interstate commerce, by the officers and directors of the defendant Hilton Hotels Corporation, including shares sold to said Corporation by the individual defendants as follows:

Conrad N. Hilton (including a corporation controlled by him).....	375,967
Barron Hilton	126,392
Henry Crown (including a corporation controlled by him)	70,631
Charles L. Fletcher	24,100
Robert P. Williford	14,150
Vernon Herndon	4,408
Robert J. Caverly	464
Conrad N. Hilton Foundation (a charitable foundation controlled by Conrad N. Hilton)	28,334

12. At all times relevant to the matters alleged herein, the individual defendants, and each of them, as officers and directors of the defendant Hilton Hotels Corporation, owed a fiduciary duty to said Corporation and to its 73 shareholders, and said fiduciary obligation required that the officers and directors protect, preserve, and advance the welfare of the defendant Corporation and its shareholders, act in the best interests of the Corporation and its shareholders, and refrain from acts and doings whereby the personal benefit of the directors and officers, or any one or more of them, or the interests of Hilton Credit Corporation, would be enhanced to the detriment of the defendant Hotels Corporation and its shareholders.

13. Contrary to their fiduciary duty and obligation, the individual defendants engaged in the scheme and plan and deceptive devices and practices set forth above, for the purpose of advancing their own personal interests, and particularly the personal financial interests of defendants Conrad N. Hilton, Barron Hilton, and Henry Crown, and also the interests of Hilton Credit Corporation, at the expense of the defendant Corporation and its shareholders. By such illegal and fraudulent means, the individual defendants caused the defendant Hotels Corporation to pay out and waste corporate funds in excess of \$3,441,000, of which total the individual defendants personally took and received approximately \$2,002,369.50. To the extent of \$3,441,000 the defendant Hotels Corporation has been defrauded, 74 and to the extent of \$2,002,369.50 said defrauding of the defendant Hotels Corporation has directly benefited the individual defendants.

14. No demand has been made on the defendant Hilton Hotels Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the

affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Hotels Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

15. The above-described device, scheme, and plan was carried out and put into effect by the individual defendants and the defendant Corporation by and through the use of the United States mails and other means of communication and transmission of information in interstate commerce, including the telephone.

Wherefore, plaintiff prays that judgment be entered against the individual defendants, and the defendant
75 Hilton Credit Corporation, jointly and severally, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of their illegal acts in violation of Section 10(b) of the Securities and Exchange Act of 1934 and the Rules and Regulations promulgated thereunder, namely in the amount of \$3,441,000, together with interest thereon from February 5, 1963, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

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Count VIII.

Plaintiff complains of the defendants, and each of them, as follows:

1-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

4-5. Plaintiff realleges paragraphs 4 and 5 inclusive of Count VII as paragraphs 4 and 5 of this Count, precisely as though said paragraphs were set out in full herein.

6. The claim herein pleaded arises under Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 17q(a) which reads as follows:

Sec. 17 (a) It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

7. Jurisdiction of this matter is conferred on this Court by Section 22 of the Securities Act of 1933, 15 U.S.C. Section 77z; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U.S.C. Section 1337.

8-15. Plaintiff realleges paragraphs 8 to 15 inclusive of Count VII as paragraphs 8 to 15 inclusive of this Count,

precisely as though said paragraphs were set out in full herein.

Wherefore, plaintiff prays that judgment be entered against the individual defendants and the defendant Hilton Credit Corporation, jointly and severally, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of their illegal acts in violation of Section 17(a) of the Securities Act of 1933, namely in the amount of \$3,441,000, together with interest from February 5, 1963, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

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Count IX.

Plaintiff complains of the defendants, and each of them, as follows:

1.-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

4.-5. Plaintiff realleges paragraphs 4 and 5 inclusive of Count VII as paragraphs 4 and 5 of this Count, precisely as though said paragraphs were set out in full herein.

6. The claim herein pleaded arises under Sections 9(a)(4) and 9(e) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 77i(4) and 77e which read as follows:

Sec. 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

* * * * *

(4) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

* * * * *

79 (e) Any person who willfully participates in any act or transaction in violation of subsections (a), (b), or (c) of this section, shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue in law or in equity in any court of competent jurisdiction to recover the damages sustained as a result of any such act or transaction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant. Every person who becomes liable to make any payment under this subsection may recover contribution as in cases of contract from any person who, if joined in the original suit, would have been liable to make the same payment. No action shall be maintained to enforce any liability created under this section, unless brought within one year after the discovery of the facts constituting the violation and within three years after such violation.

7.-9. Plaintiff realleges paragraphs 7 to 9 inclusive of Count VII as paragraphs 7 to 9 inclusive of this Count, precisely as though said paragraphs were set out in full herein.

10. Said explanation was false and misleading, and was known by the individual defendants to be false and misleading, in respects indicated hereinafter. Said false and misleading statement, as well as other false and misleading statements contained in the documents (Exhibits "A", "B", "C", "D", "E", and "F") which are hereinafter specifically set forth, were integral parts of a plan and scheme designed to cause defendant Hotels Corporation to purchase shares of stock and to deceive the shareholders, other than the individual defendants, into falsely believing that the purchase of 1,390,706 shares of Hilton Credit Corporation stock by Hilton Hotels Corporation would inure to the benefit of Hilton Hotels Corporation, all in violation of Sections 9(a)(4) and 9(e) of the Securities Exchange Act of 1934, in that:

- (a) The individual defendants represented, that on January 10, 1963 the market price of Hilton Credit Corporation stock was between \$3.125 and \$3.50 per share. Said representation was misleading in that the individual defendants did not disclose that they had engaged in acts and transactions, including the transmission or "leaking" of information about the proposed tender price, and the purchase of or bidding on shares, designed to peg, fix, rig, and artificially inflate that price in order to achieve temporarily, in the period of time immediately prior to January 15, 1963, market price quotations close to the price the individual defendants proposed to use for the purposes of their scheme and plan. During the two years prior to 1961, the stock of Hilton Credit Corporation was traded over-the-counter at a range of prices of \$4½ to \$15 per share. During 1961, the range was \$2½ to \$5½; during 1962, the range was \$1½ to \$3¾. During 81 December 1962 the month immediately preceding the offer and tenders, the range of prices was \$2½ Bid-

\$3 $\frac{1}{8}$ Asked. Among other devices for causing a temporary artificial price rise in the stock of Hilton Credit Corporation at the end of January 1963, the individual defendants announced to stockholders of Hilton Hotels Corporation, by letter of January 7, 1963 (Exhibit "D" attached hereto), that on January 3, 1963, the board of directors of Hilton Hotels Corporation had authorized a tender plan to purchase shares of Hilton Credit Corporation at a price of \$3.25 per share. This announcement immediately caused the price of the stock to rise sharply.

(b) The interests of the individual defendants Conrad N. Hilton, Henry Crown, and others as creditors of Hilton Credit Corporation were concealed in the Letter and Offer of January 15, 1963 (Exhibits "E" and "F" attached hereto) and in the Letter of January 7, 1963 (Exhibit "D" attached hereto). When the stockholders of both companies were informed that Hilton Hotels Corporation was to be put into a position of greater responsibility for the financial affairs and liabilities of Hilton Credit Corporation, it was
82 not disclosed that this increased responsibility and financial backing would inure in good part to the personal advantage of those individual defendants who, as creditors, faced serious collection problems.

11. As the result of the foregoing false and misleading representations, the defendant Hilton Hotels Corporation was caused by the individual defendants to purchase a total of 1,058,997 shares of Hilton Credit Corporation common stock at a total price of \$3,441,740.25. Included in said shares were 631,262 shares purchased, by the use of the United States mails and other means of transportation and communication in interstate commerce, from the officers and directors of defendant Hilton Hotels Corpora-

tion, including shares from the individual defendants as follows:

Conrad N. Hilton (including a corporation controlled by him).....	375,967
Barron Hilton	126,392
Henry Crown (including a corporation controlled by him).....	70,631
Charles L. Fletcher.....	24,100
Robert P. Williford.....	14,150
Vernon Herndon	4,408
83 Robert J. Caverly.....	464
Conrad N. Hilton Foundation (a charitable foundation controlled by Conrad N. Hilton)	28,334

12. No demand has been made on the defendant Hilton Hotels Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

13. The above-described device, scheme, and plan was carried out and put into effect by the individual defendants by and through the use of the United States mails and other means of communication and transmission
84 of information in interstate commerce, including the telephone.

Wherefore, plaintiff prays that judgment be entered against the individual defendants, and the defendant

Hilton Credit Corporation, jointly and severally, for the damages sustained by the defendant Hilton Hotels Corporation by virtue of their illegal acts in violation of Sections 9(a)(4) and 9(e) of the Securities Act of 1933, namely in the amount of \$3,441,740.25, together with interest thereon from February 5, 1963, that plaintiff be awarded her costs, and the plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

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Count X.

Plaintiff complains of the defendants Conrad N. Hilton, Barron Hilton, Henry Crown, Charles L. Fletcher, Robert P. Williford, Vernon Herndon, Robert J. Caverly, and of the defendant Hilton Hotels Corporation, as follows:

1-3. Plaintiff realleges paragraphs 1 to 3 inclusive of Count I as paragraphs 1 to 3 inclusive of this Count precisely as though said paragraphs were set out in full herein.

4-5. Plaintiff realleges paragraphs 4 and 5 inclusive of Count VII as paragraphs 4 and 5 inclusive of this Count precisely as though said paragraphs were set out in full herein.

6. The claim herein pleaded arises under Section 12(2) of the Securities Act of 1933, 15 U. S. C. Section 771(2), which reads as follows:

Sec. 12. Any person who—

* * *

(2) offers or sells a security (whether or not exempted by the provisions of section 3, other than paragraph (2) of subsection (2) thereof), by the use of any means or instruments of transportation of communication in interstate commerce or of the mails,

by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration
86 paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

7. Jurisdiction of this matter is conferred on this Court by Section 22 of the Securities Act of 1933, 15 U. S. C. Section 77z; jurisdiction also rests on Section 1337 of the Judicial Code, 28 U. S. C. Section 1337.

8.-9. Plaintiff realleges paragraphs 8 and 9 of Count VII as paragraphs 8 and 9 of this Count precisely as though said paragraphs were set out in full herein.

10. The various communications made to the defendant Corporation's shareholders of Hilton Credit Corporation and referred to herein as Exhibits "E" and "F", contain both untrue statements and statements which were misleading because of their failure to state certain material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading. Said untruths and omissions, which were known to the individual defendants but not to the other shareholders of defendant Hilton Hotels Corporation, were caused to be communicated by the individual defendants
to the shareholders of Hilton Credit Corporation in
87 order to enable certain of said individual defendants to dispose of large amounts of the common stock of

defendant Hilton Credit Corporation at prices above the market price by selling said stock to the defendant Hilton Hotels Corporation. Said sales were in violation of the provisions of Section 12(2) of the Securities Act of 1933 in that:

(a) The individual defendants were engaged in a plan and scheme to make it possible for defendant Conrad N. Hilton and other officers and directors of the two corporations to dispose of shares in the defendant Hilton Credit Corporation at prices more favorable than they could obtain in the market. Furthermore, the individual defendants were engaged in a plan and scheme to make it possible for defendants Henry Crown and Barron Hilton to dispose of large holdings in the common stock of the defendant Hilton Credit Corporation held by them, at prices above the market prices for such stock;

88 (b) The individual defendants acted in such a way as to conceal from defendant Hilton Hotels Corporation and from its stockholders the true purpose of the offer to purchase described above, and in such a way as to make it appear that it was to said Hotels Corporation's advantage to effect such a purchase of Hilton Credit Corporation shares. In fact, such a purchase was contrary to the interests of defendant Hilton Hotels Corporation since the effect of it was to reduce working capital by approximately \$3,441,000 at a time when the Corporation's debt and the need for working capital was increasing, to cause Hilton Hotels Corporation to pay an excessive price for the stock of Hilton Credit Corporation, and to cause Hilton Hotels Corporation to take a larger role in underwriting Hilton Credit Corporation's debts, liabilities and losses. At the end of 1962, Hilton Credit Corporation had losses totaling more than \$8,500,000 and a capital deficit of

more than \$1,400,000. Said Credit Corporation owed \$12,000,000 to banks and other financial institutions. It also was indebted to defendants Conrad N. Hilton, Henry Crown, Barron Hilton, Hilton Hotels Corporation, and others in the amount of \$5,000,000 on notes payable in 1963.

- 89 (c) The individual defendants represented that on January 10, 1963 the market price of Hilton Credit Corporation stock was between \$3.125 and \$3.50 per share. Said representation was misleading in that the individual defendants did not disclose that they had engaged in acts and transactions, including the transmission or "leaking" of information about the proposed tender price, and the purchase of or bidding on shares, designed to peg, fix, rig, and artificially inflate that price in order to achieve temporarily, in the period of time immediately prior to January 15, 1963, market price quotations close to the price the individual defendants proposed to use for the purposes of their scheme and plan. During the two years prior to 1961, the stock of Hilton Credit Corporation was traded over-the-counter at a range of prices of \$4 $\frac{1}{4}$ to \$15 per share. During 1961, the range was \$2 $\frac{1}{2}$ to \$5 $\frac{1}{4}$; during 1962, the range was \$1 $\frac{1}{8}$ to \$3 $\frac{3}{8}$. During December 1962, the month immediately preceding the offer and tenders, the range of prices was \$2 $\frac{5}{8}$ Bid—\$3 $\frac{1}{8}$ Asked. Among other devices for causing a temporary artificial price rise in the stock of Hilton Credit Corporation at
- 90 the end of January 1963, the individual defendants announced to stockholders of Hilton Hotels Corporation, by letter of January 7, 1963 (Exhibit "D" attached hereto), that on January 3, 1963, the board of directors of Hilton Hotels Corporation had authorized a tender plan to purchase shares of Hilton Credit Corporation at a price of \$3.25 per share. This announce-

ment immediately caused the price of the stock to rise sharply.

(d) The interests of the individual defendants Conrad N. Hilton, Henry Crown, and others as creditors of Hilton Credit Corporation were concealed in the Letter and Offer of January 15, 1963 (Exhibits "E" and "F" attached hereto) and in the Letter of January 7, 1963 (Exhibit "D" attached hereto). When the stockholders of both companies were informed that Hilton Hotels Corporation was to be put into a position of greater responsibility for the financial affairs and liabilities of Hilton Credit Corporation, it was not disclosed that this increased responsibility and financial backing would inure in good part to the personal advantage of those individual defendants who, as creditors, faced serious collection problems.

91 (e) The individual defendants could not have otherwise sold the stock of Hilton Credit Corporation which they sold to Hilton Hotels Corporation pursuant to the offer except by a secondary public offering, with all of the high costs attendant thereupon, with full disclosure of material facts by way of registration in conformity to the federal security laws and rules and regulations, at a price far below the price specified in the offer, and at a time when the market for public offerings was unfavorable. It was the purpose and intent of the individual defendants, by their illegal plan, scheme, and contrivance, to avoid any such disadvantageous consequences to their own personal interests.

11. As the result of the foregoing false and misleading statements, the defendant Hilton Hotels Corporation was caused by the individual defendants to purchase a total of 1,058,997 shares of Hilton Credit Corporation common

stock for a total price of \$3,441,740.25. Included in said shares were 631,262 shares sold to said Hotels Corporation, by the use of the United States mails and other means of transportation and communication in interstate commerce, by the officers and directors of the defendant

92 Hotels Corporation, including shares sold to the Corporation by the individual defendants as follows:

Conrad N. Hilton (including a corporation controlled by him)	375,967
Barron Hilton	126,392
Henry Crown (including a corporation controlled by him)	70,631
Charles L. Fletcher	24,100
Robert P. Williford	14,150
Vernon Herndon	4,408
Robert J. Caverly	464
Conrad N. Hilton Foundation (a charitable foundation controlled by Conrad N. Hilton)	28,334

12. No demand has been made on the defendant Hilton Hotels Corporation to prosecute its remedy for the above-described fraud against the individual defendants since any such demand would be a futile gesture and act by reason of the circumstances, pleaded above, whereby the affairs of the defendant Corporation are completely dominated and controlled by the officers and directors named as defendants herein, said defendants being the persons who conceived, approved, and implemented the above-described illegal and fraudulent scheme, plan and deceptive acts and practices employed to defraud the defendant Hotels Corporation and its shareholders. Plaintiff has heretofore protested to the defendant Corporation against the gross impropriety of the acts set forth above.

Wherefore, plaintiff prays that judgment be entered against each of the individual defendants who sold Hilton Credit Corporation stock to Hilton Hotels Corporation for

the damages sustained by the defendant Hilton Hotels Corporation by virtue of such sale of said Credit Corporation's common stock in violation of Section 12(2) of the Securities Act of 1933, namely, in the amount of the consideration paid by the Hotels Corporation to each individual defendant for the stock so sold, together with interest on such amount of consideration from February 5, 1963, that plaintiff be awarded her costs, and the plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

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Count XI.

Plaintiff complains of defendants Hilton Hotels Corporation, Conrad N. Hilton, Henry Crown, Robert J. Caverly, Robert P. Williford, Spearl Ellison, Y. Frank Freeman, Willard W. Keith, Lawrence Stern, Sam D. Young, Fritz B. Burns and Benno Bechhold, as follows:

1.-2. Plaintiff realleges paragraphs 1 and 2 of Count I as paragraphs 1 and 2 of this Count precisely as though said paragraphs were set out in full herein.

3. The defendants Conrad N. Hilton, Benno Bechhold, Fritz B. Burns, Spearl Ellison, Y. Frank Freeman and Willard W. Keith reside in and are citizens of the State of California. The defendants Henry Crown, Robert J. Caverly, Robert P. Williford and Lawrence Stern reside in and are citizens of the State of Illinois. The defendant Sam D. Young resides in and is a citizen of the State of Texas. Each of said defendants is, and at all times relevant to the matters alleged herein was, a director, or both an officer
95 and director, of defendant Hilton Hotels Corporation, as follows:

Conrad N. Hilton, Director, Chairman of the Board, and President

Robert P. Williford, Director, Vice Chairman of the Board

Robert J. Caverly, Director, Executive Vice President

Spearl Ellison, Director, Senior Vice President

Henry Crown, Director, Vice President

Benno M. Bechhold, Director

Y. Frank Freeman, Director

Willard W. Keith, Director

Lawrence Stern, Director

Sam D. Young, Director

Fritz B. Burns, Director

4.-5. Plaintiff realleges paragraphs 4 and 5 inclusive of Count VII as paragraphs 4 and 5 of this Count, precisely as though said paragraphs had been set out in full herein, said allegations being herein included only with respect to the defendants named as defendants in this Count XI.

6. The claim herein pleaded arises under the General Corporation Law of the State of Delaware, Title 8 of 96 the Delaware Code. Jurisdiction of this matter is conferred on this Court by virtue of diversity of citizenship of the parties. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.

7. This action is not a collusive one instituted for the purpose of conferring upon a Court of the United States jurisdiction of a cause of action over which it would not otherwise have jurisdiction.

8.-14. Plaintiff realleges paragraphs 8, 9, 10, 11, 12, 13 and 14 of Count VII as paragraphs 8 to 14 inclusive of this Count precisely as though said paragraphs were set out in full herein, said allegations being herein included only with respect to the defendants named as defendants in this Count XI.

15. The above-described device, scheme, and plan was carried out by acts and measures taken at the principal place of business of Hilton Hotels Corporation, 720 South Michigan Avenue, Chicago, Illinois. Thus, the letter and

offer of January 15, 1963 (Exhibits "E" and "F") were issued by the Hotels Corporation at its Chicago office. Publicity releases in connection with the plan, scheme, and device were similarly issued at Chicago. One of the two designated depositaries for shares tendered pursuant to the offer was the American National Bank and Trust Company of Chicago, 33 North LaSalle Street, Chicago, Illinois, and shares were tendered to said depositary.

97 Wherefore, plaintiff prays that the individual defendants be required to account for all losses and damages sustained by the Corporation and for all profits, gains, and benefits derived by such defendants as a result of their illegal acts and breaches of fiduciary duties, together with interest thereon, that plaintiff be awarded her costs, and that plaintiff's attorneys be awarded fees for services rendered to her and all other common shareholders of defendant Hilton Hotels Corporation and to the defendant Corporation for the instituting and prosecuting of this corporate cause of action.

Richard F. Watt,
Walter J. Rockler,
David R. Kentoff,

Attorneys for Plaintiff.

Cotton, Watt, Rockler & Jones,
105 West Adams Street,
Chicago 3, Illinois,
FRanklin 2-6275.

State of New York, }
County of New York. } ss.

Dora Surowitz, being first duly sworn, on oath deposes and states that she is the plaintiff in the above-entitled cause, that she has read the above and foregoing Complaint by her attorneys subscribed and is familiar with the matters therein alleged; that as to the matters alleged in paragraph 1 of each Count; in paragraphs 6 and 7 of Counts I, II, III, IV, and V; in the last sentence of paragraph 13 of Counts I, II, V and VI; in the last sentence of paragraph 10 of Counts III and IV; in paragraph 5 of Count VI; in the last sentence of paragraph 14 of Counts VII, VIII, and XI; in the last sentence of paragraph 12 of Counts IX and X—said allegations are true and correct. That as to all other matters alleged in the above and foregoing Complaint, she makes said allegations on information and belief and believes them to be true.

Dora Surowitz.

Subscribed and Sworn to before me this 12 day of December, 1963.

Charles Horn,
Notary Public.

Exhibit "A".

Hilton Hotels.

Letter of Transmittal.

December 17, 1962.

To the Holders of Common Stock of
Hilton Hotels Corporation:

There is enclosed an offer of tender by Hilton Hotels Corporation (hereinafter referred to as "Hilton") which permits you, if you so desire, to tender all or any part of your stock for sale to this corporation. The reason for so doing is set forth in the enclosed offer letter. A copy of the last quarterly report of the corporation has been sent to you.

As indicated in the offer, you may select the price between \$28.125 and \$29.50 per share at which you are willing to tender all or any part of your stock. If your tendering price is low enough to be accepted and if 300,000 shares are tendered, Hilton shall purchase your stock for cash. For example, if the stockholders of this corporation tender 500,000 shares, 100,000 each at \$28.125, \$28.25, \$28.50, \$29.00 and \$29.50 per share, Hilton shall purchase the shares tendered at \$28.125, \$28.25 and \$28.50, but not the shares tendered at \$29.00 or \$29.50 per share.

As stated in the offer, if less than 300,000 shares are tendered, Hilton shall not be obligated to, but may, purchase all shares tendered at the tendering price. Reference is made to the offer with respect to the provisions pertaining to the tender of shares by the officers and directors of Hilton.

So that you may be fully advised on all recent develop-

ments, I am delighted to inform you that the land under The Palmer House has been sold to Prudential Insurance Company of America (hereinafter referred to as "Prudential") for the sum of \$14,000,000 and leased back to a wholly owned subsidiary of Hilton Hotels Corporation at a rental of \$962,500 per annum, for a period of thirty years, with renewal rights aggregating sixty years. The subsidiary has negotiated a mortgage in the amount of \$15,000,000 with Prudential at 6% interest. An initial disbursement of \$10,500,000 has been made under this mortgage, the proceeds of which were used to retire the existing first mortgage on The Palmer House and for the purchase of its current assets from Hilton at book value. The balance of the funds available under the mortgage, together with funds from the operation of the property, will be used for an extensive modernization program of The Palmer House.

Yours very truly,

Hilton Hotels Corporation,
By Conrad N. Hilton,
Chairman of the Board and President.

100

Exhibit "B."

Hilton Hotels.

Offer.

December 17, 1962

To the Holders of Common Stock of
Hilton Hotels Corporation:

Hilton Hotels Corporation (hereinafter referred to as "Hilton") hereby offers to purchase 300,000 of the issued and outstanding shares of Common Stock, par value \$2.50 per share, of Hilton at the price and upon the terms and conditions set forth herein. This offer will remain open until 4:00 o'clock, P.M., Eastern Standard Time, on January 17, 1963. Hilton reserves the right at any time or from time to time to extend said period, by notice to Manufacturers Hanover Trust Company and American National Bank and Trust Company of Chicago, the Depositories, given prior to the initial or any subsequent time for expiration of this offer, but in no event to a date later than January 28, 1963.

There are now outstanding 3,841,362 shares of Common Stock, excluding 694,738 shares in the treasury and 450,000 shares reserved for exercise of warrants originally attached to the 6% Subordinated Sinking Fund Debentures.

Hilton Common Stock is listed on the New York and Pacific Coast Stock Exchanges. The price range for Hilton Common Stock on the New York Stock Exchange for the period January 1, 1962, to and including December 10, 1962, as published by the Commercial and Financial Chronicle, ranged from a high of \$33.625 to a low of \$22.00 per share. The closing price of said stock on the New York

Stock Exchange at the close of business on the date preceding this offer was \$28.125 (herein referred to as the "current market price").

The purpose of Hilton in making this offer is to repurchase a portion of the Common Stock of this corporation equal to the number of shares heretofore issued in connection with the acquisition of certain properties, which properties are no longer owned by this corporation. All shares purchased pursuant to this offer will be added to and become treasury shares. Hilton agrees to accept and pay for the shares of Common Stock tendered in the manner hereinafter set forth, if 300,000 of such shares are so tendered, provided that, if less than that number are so tendered prior to the expiration of this offer, Hilton shall not be obligated to, but may, purchase any of the shares tendered, and if Hilton elects not to purchase said shares, all shares received by the Depositaries will be returned to the depositing stockholders.

Each shareholder accepting this offer shall specify a price between the current market price and \$29.50 per share, at which it will sell the shares tendered and deposited (said price specified by each shareholder is hereinafter called the "tendering price"). Hilton will purchase and pay for shares tendered at a price beginning with the lowest tendering price and graduating to the higher tendering price, but not in excess of \$29.50, as may be required to purchase the tendered shares. On January 18, 1963, Hilton will deposit with the Depositaries the sum of cash sufficient to purchase the tendered shares in accordance with the terms of this offer, the shareholders whose shares are purchased will be paid their respective tendering price for each share tendered, deposited and purchased by Hilton within 72 hours after the expiration of this offer, and said tendered shares will be transferred of record to Hilton.

101 In the event that the purchase by Hilton of all of the shares tendered at any certain tendering price required to obtain at least 300,000 shares would require this corporation to purchase in excess of 300,000 shares tendered (said price being herein referred to as the "maximum price"), Hilton may, in its discretion, but shall not be obligated to, elect to purchase all of said shares tendered at the maximum price. If Hilton shall so elect, it will deposit with the Depositaries, together with the sum required by the preceding paragraph, a sum in cash equal to the aggregate maximum price for all such additional shares, the shareholders will be paid said maximum price for each share deposited within 72 hours after the expiration of this offer, and such additional shares will be transferred of record to Hilton. If Hilton shall not elect to purchase all additional shares, it shall only be required to purchase a portion of the shares tendered by each stockholder at the maximum price, determined by the ratio between the total number of shares required to be purchased at the maximum price to equal 300,000 shares and the total number of shares tendered by all stockholders at the maximum price. Any shares tendered but not purchased will be returned to the depositing stockholders. Hilton will pay all Federal and state stock transfer taxes payable in respect of shares purchased by it.

Mr. Conrad N. Hilton (including shares owned by a corporation controlled by him) and Colonel Henry Crown (including shares held in trust or by family members) and all the officers and directors of Hilton (referred to collectively in this offer and Letter of Transmittal as officers and directors) who, as a group, own a total of 1,185,718 shares of Hilton, have been polled and the officers and directors have agreed to tender in the aggregate ten per cent (10%) of said 1,185,718 shares or a total of 118,572 shares, in the event that the total number of shares ten-

dered and deposited by all other stockholders of Hilton pursuant to this offer does not equal 300,000 shares, provided, however, if the number of shares tendered hereunder by all stockholders other than said officers and directors is between 181,428 and 300,000 shares, the officers and directors shall only tender such number of shares as shall be necessary for the total of all shares tendered hereunder to equal 300,000 shares.

Stockholders of Hilton may accept the offer hereby made by depositing with either of the Depositaries, Manufacturers Hanover Trust Company, 70 Broadway, New York, New York, or American National Bank and Trust Company of Chicago, 33 North La Salle Street, Chicago, Illinois, prior to the expiration of this offer, certificates representing shares of Common Stock, par value \$2.50 per share of Hilton, accompanied by a duly executed Acceptance in the form enclosed with this offer and by duly executed separate stock powers with signatures guaranteed.

For the benefit of Hilton stockholders who are unable to deposit their certificates in the above manner, shares of Hilton stock will be deemed properly tendered if a properly executed Acceptance, accompanied by certificates representing shares of Hilton have been deposited with any commercial bank or trust company in the continental United States, or with any member firm of the New York Stock Exchange and either of the Depositaries shall have received from such bank, trust company or member firm before the expiration of this offer a telegram giving the name of the stockholders, the serial numbers of the certificates deposited and the number of shares of Common Stock of Hilton represented by each such certificate and stating that such certificates together with a duly executed Acceptance have been forwarded by such bank, trust company or member firm by registered mail to one of the Depositaries.

Accordingly, if you desire to accept the offer of Hilton to purchase any of your shares of Common Stock of Hilton, you should execute the enclosed Acceptance and Stock Power and forward the same, together with certificates for your shares, by registered mail, to Manufacturers Hanover Trust Company at 70 Broadway, New York, New York, or to American National Bank and Trust Company of Chicago at 33 North La Salle Street, Chicago, Illinois.

Yours very truly,

Hilton Hotels Corporation,
By Conrad N. Hilton,
*Chairman of the Board and
President.*

Hilton Hotels.

Notice.

January 7, 1963

To the Holders of Common Stock of
Hilton Hotels Corporation

On December 17, 1962, an offer was mailed to all of the stockholders of Hilton Hotels Corporation (hereinafter referred to as "Hilton"), whereby Hilton agreed to purchase 300,000 of its issued and outstanding shares of Common Stock, par value \$2.50 per share, at the price and upon the terms and conditions set forth in the Offer (hereinafter referred to as the "Offer").

Said Offer is hereby amended as follows:

1. Notwithstanding the provision contained in the Offer requiring the officers and directors (as defined in the Offer) to tender up to 10% of their Common Stock, said officers and directors, in addition to any shares they may be obligated to tender under the Offer, may tender any shares of Common Stock owned by them in such amounts, at such tendering price and in the same manner as all other stockholders of this corporation. In the event that any of the officers and directors so tender any of their shares of Common Stock, said officers and directors shall be released, to the extent of the number of shares so tendered, from their obligation to tender up to 10% of their Common Stock under the provisions of the Offer relating to the tender by officers and directors, and the provisions of the Offer relating to the tender by officers and directors shall be adjusted accordingly.

2. Mr. Conrad N. Hilton, Chairman of the Board, President and the principal shareholder of the corporation, has advised the corporation that he will tender 85,847 shares of Common Stock pursuant to the terms of the Offer, which is the number of shares of Common Stock he may have been required to tender under the terms of the Offer.

3. The Offer is hereby extended to 4:00 o'clock P. M., Eastern Standard Time, on January 24, 1963.

Except as modified herein, the Offer and all of the terms and provisions of the same shall remain in full force and effect. In the event that any shareholder who has tendered shares prior to January 7, 1963 pursuant to the Offer desires to change the tendering price (as defined in the Offer) because of anything contained herein, said shareholder may so change the tendering price by sending a letter to either of the Depositaries, specifying their name, address, number of shares tendered, the date tendered, the serial numbers of the certificates deposited and the revised tendering price.

Yours very truly,

Hilton Hotels Corporation,
By Robert P. Williford,
Vice Chairman of the Board.

Hilton Hotels,
Executive Offices,
720 South Michigan Avenue,
Chicago 5, Illinois.

January 7, 1963

To the Stockholders of
Hilton Hotels Corporation

The year 1962 has been a significant one in the existence of your corporation. We have heretofore advised you of the strenuous efforts that are being made to promote new business and to reduce expenses, and, also, in 1962 Hilton Hotels International opened three hotels—Acapuleco, Amsterdam and Trinidad. It is contemplated that twelve hotels will be opened in 1963 or in 1964: Teheran, London, New York, Rotterdam, Rome, Athens, Tokyo, Portland, Montreal (Dorval Airport), San Francisco, Kahala (Hawaii) and Washington, D. C. We are constantly investigating new sites for additional hotels and inns in accordance with our policy of operating hotels in the major cities and other principal locations throughout the world.

Other than the efforts devoted to business promotion and to the reduction of expenses, principal attention during the past year has been given to the strengthening of the capital structure of the corporation and its subsidiaries. All of the outstanding shares of 5% First Preferred Stock, Series A, were called for retirement, and all of the outstanding shares of 5½% Cumulative Voting Preferred Stock, Series A, were redeemed or converted into Common Stock. As a result, your corporation has only Common Stock outstanding.

On December 17, 1962, an offer was made to all of the stockholders to purchase 300,000 shares of the Common Stock of the corporation (hereinafter referred to as the "Offer"). As explained in the Offer, the purpose was to retire shares of Common Stock approximately equal to the number of such shares heretofore issued in connection with the acquisition of certain properties, which properties are no longer owned by the corporation. In the event that 300,000 shares are tendered, the number of shares outstanding will be reduced to 3,541,362.

The response to the Offer has to date been unsatisfactory. In view of this and delays because of the holidays, the time for acceptance of the tender is extended to 4:00 o'clock P. M. Eastern Standard Time, on January 24, 1963. Due to the desire of this corporation to acquire 300,000 shares of its Common Stock for the reasons set forth in the Offer, two amendments are being made to the Offer.

Notwithstanding the provisions contained in the Offer requiring the officers and directors to tender up to 10% of their Common Stock, the officers and directors, in addition to any shares they may be obligated to tender, may tender any shares owned by them in such amounts, at such tendering prices and in the same manner as all other stockholders of the corporation.

104 Under the circumstances, in order to assist the corporation in acquiring the 300,000 shares and in order to reduce the number of shares of outstanding Common Stock for the reasons set forth in the Offer, Mr. Conrad N. Hilton, Chairman of the Board, President and the principal shareholder of your corporation, will tender 85,847 shares of Common Stock to the corporation pursuant to the terms of the Offer. If Mr. Hilton's tender is accepted, Mr. Hilton will own beneficially 815,753 shares of outstanding Common Stock.

Accordingly, Mr. Hilton (including shares owned by a

corporation controlled by him) will not be required to tender any further shares of Common Stock in the event the officers and directors (as defined in the Offer) are called upon to tender up to but not exceeding 10% of their Common Stock, as provided in the Offer. Therefore, an appropriate change will be made to the provisions of the Offer relating to the tender of shares by officers and directors. Although the corporation has not been advised whether or not any of the other officers or directors will tender any shares which they are not required to tender pursuant to the Offer, some of the other officers and directors may tender some of their shares of Common Stock. In the event that any of the other officers and directors so tender any of their shares of Common Stock, said officers and directors shall be released, to the extent of the number of shares so tendered, from their obligation to tender up to 10% of their Common Stock under the provisions of the Offer relating to the tender by officers and directors, and the provisions of the Offer relating to the tender by officers and directors shall be modified accordingly. Your attention is called to the enclosed Notice for further details as to the modification of said Offer.

In addition to the reduction in the classes and amounts of stock outstanding, as aforesaid, this corporation has consummated various transactions in order to reduce the total amount of debt outstanding. A cash payment of \$9,598,000 was made on the System Mortgage, and, in connection with the Palmer House transaction, the Palmer House first mortgage (\$9,200,000) was paid in full. On December 28, the refinancing of the System Mortgage, which had been reduced to \$31,220,000, was affected. A first mortgage of \$12,000,000 was placed on The Statler Hilton Hotel, Washington, D. C., with interest of 5½%, payable in approximately 20 years. In the event of a default under the mortgage, the holder thereof must look solely to the property

for payment of principal and interest. A first mortgage of \$10,000,000 was placed on The Statler Hilton Hotel, Boston, upon similar terms and conditions. This reduced the outstanding balance on the System Mortgage to \$9,220,000. The proceeds of the sale of any Statler properties will be applied toward the payment of this indebtedness.

As a result of said refinancing, the Washington and Boston hotels are no longer subject to the lien of the System Mortgage, and certain covenants restricting your corporation's right to pay dividends and other restrictive covenants have been deleted from the System Mortgage. This will allow your corporation to conduct its affairs with greater flexibility.

During the year, steps were taken to consolidate, simplify and strengthen Hilton's corporate structure by dissolving various subsidiaries or merging the same. As you know, the requisite number of stockholders of Hilton and Statler Hotels Delaware Corporation approved a merger of the two corporations, and on July 23, 1962, said Statler was merged into Hilton. Recently, Metropolitan Hotel Corporation, a wholly owned subsidiary of Hilton, which owns the hotel in Portland now under construction, has been liquidated into your corporation, and The Caribe Hilton Corporation of Delaware, a wholly owned subsidiary of Hilton Hotels International, Inc., has been liquidated into said Hilton Hotels International, Inc.

The funds required to accomplish the various changes in the capital structure of this corporation were derived mainly from the sale of the Savoy Hilton and the Palmer House transaction. The Savoy Hilton was sold for \$24,-

750,000 in cash, but Hilton continues to manage the 105 same under a management agreement. On December

12, as you have been advised, the Palmer House transaction was concluded. Hilton sold the land under the Palmer House for the sum of \$14,000,000 and leased it back

to a wholly owned subsidiary for a term of thirty years with several favorable renewal options. Palmer House Company, a wholly owned subsidiary of this corporation, took down \$10,500,000 out of a \$15,000,000 leasehold mortgage commitment, and will carry out a program of modernizing The Palmer House. On August 7, 1962, The Beverly Hilton garage (which Hilton had constructed next to The Beverly Hilton Hotel) was sold to the owners of The Beverly Hilton Hotel for approximately \$1,000,000 and your corporation leased it back on terms and conditions similar to those previously agreed to with respect to said hotel.

In January of 1962, Hilton Inns, Inc., a wholly owned subsidiary, entered into Note Purchase Agreements with several institutional investors, whereunder such investors have agreed to advance up to \$18,000,000 of financing for the development of the Hilton Inns program. A first takedown of \$8,460,000 was consummated in April. In connection with these borrowings and with part of the proceeds of the same, Hilton Inns acquired the land and buildings comprising the Hilton Inn, Atlanta, Georgia, subject to the existing first mortgage. Your corporation is not liable for the payment of the mortgage notes or other obligations of Hilton Inns under the financing program.

Even though 1963 is only a few days old, we would like to keep you fully advised of events which have already transpired. On January 3, 1963, your Board of Directors, at a special meeting called to consider problems incident to Hilton Credit Corporation, authorized the officers of your corporation to call for tenders of shares of stock of Hilton Credit Corporation at a price of \$3.25 per share, provided that 80% of the stock (2,390,706 shares) of Hilton Credit Corporation, including the shares already owned by your corporation, would be acquired. As you know, your corporation owns 1,000,000 shares of Hilton Credit stock. The officers and directors of this corporation and Hilton Credit

Corporation have agreed to tender their stock, approximately 630,000 shares, at this price. By taking such a course of action, many problems incident to the operation of Hilton Credit Corporation as an affiliate will be eliminated. It is anticipated that official notice of this offer will be sent to the stockholders of Hilton Credit Corporation shortly after January 15, 1963.

Sincerely,

Conrad N. Hilton,
*Chairman of the Board and
President,*
Hilton Hotels Corporation.

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Exhibit "E".

Letter of Transmittal.

January 15, 1963

To the Holders of Common Stock of
Hilton Credit Corporation:

There is enclosed an offer of tender by Hilton Hotels Corporation (hereinafter referred to as "Hilton") which permits you, if you so desire, to tender all or any part of your stock to Hilton.

As you may recall, Hilton organized Hilton Credit Corporation (hereinafter referred to as "Hilton Credit") on October 14, 1958, to take over the existing Hilton credit card activities and to expand them into the all purpose Carte Blanche credit card service. On December 17, 1958, Hilton transferred its list of cardholders, credit files and equipment used in its credit department to Hilton Credit in consideration of the issuance to Hilton of 1,000,000 shares of Hilton Credit's Common Stock.

On January 15, 1959, holders of Common Stock of Hilton were offered the right to purchase, at \$3.25 per share, one share of stock of Hilton Credit for each two shares of Hilton Common Stock held of record at such time. The prospectus pursuant to which the offering was made set forth all of the salient facts. We particularly wish to call your attention to the reference in said prospectus, dated January 15, 1959, in which it was stated that Hilton Credit, as a newcomer in the all purpose credit card field, "may be at a competitive disadvantage with organizations which have already gained public acceptance." From its inception, Hilton Credit has been faced with intense competition from the two principal all purpose credit card companies, the single purpose credit card companies and other businesses and companies offering credit to individuals. Moreover, losses on collections from cardholders and operating costs were greater than anticipated. This resulted in an operating loss of over \$9,000,000 and necessitated a complete reorganization of policies, procedure and personnel.

On March 31, 1963, the Operating Agreement between Hilton Credit and Hilton whereby Hilton Credit purchases all charge accounts created by its cardholders at the various Hilton hotels at a price equal to 97% of the face amount thereof is scheduled to expire. Under the terms of the amendment to the Agreement, Hilton has the option to extend the same for one year and Hilton Credit will be obligated to purchase all of said charge accounts at $\frac{1}{2}$ of one per cent less than the present price. At this time, Hilton has not yet determined whether to exercise such option. Negotiations are now under way. Hilton Credit has in recent months operated at a profit. This would not be possible without the business derived from Hilton.

As you know, Hilton Credit is obligated on notes to various banks in the aggregate amount of \$12,150,000, which mature under their respective terms on February 28, 1963.

107 Under the terms of an Extension Agreement, dated

February 9, 1962 with said banks, Hilton Credit has the option to extend the maturities of said notes to February 28, 1964, provided, among other things, that the \$5,000,000 Subordinated Notes, due March 1, 1963, have been extended to a date not earlier than March 1, 1964. Hilton Hotels holds \$1,900,000 of said Subordinated Notes and has agreed to extend the maturity of the same until March 1, 1964, if all of the other holders of said Subordinated Notes similarly agree. Although all of the other holders of such Subordinated Notes have not agreed to extend their maturity as yet, it is anticipated that said holders will so agree to extend the maturity of the Subordinated Notes until March 1, 1964. Accordingly, it is anticipated that the maturities of the bank loans will be extended to February 28, 1964. There is no provision for the extension of the bank loans or the Subordinated Notes after February 28, 1964 and March 1, 1964, respectively. As a result, Hilton feels that it may be required to take a major role in any refinancing of such indebtedness.

Under the circumstances, the Board of Directors of Hilton has authorized the making of an offer to Hilton Credit Stockholders to purchase 80% of the outstanding shares of Common Stock of Hilton Credit, including the shares already owned by Hilton, for \$3.25 per share upon the terms and conditions set forth in the enclosed formal offer. Hilton has no intention of merging with Hilton Credit.

For your further information, the recent general range in the market prices for shares of Common Stock of Hilton Credit is indicated by the following quotation taken from

information furnished by the National Monthly Stock Summary published by the National Quotation Bureau:

Period	Bid		Asked	
	High	Low	High	Low
Quarter ended March 31, 1962	2 $\frac{7}{8}$	2 $\frac{1}{8}$	3 $\frac{1}{4}$	2 $\frac{1}{16}$
Quarter ended June 30, 1962	3 $\frac{1}{8}$	2 $\frac{3}{4}$	3 $\frac{3}{8}$	3
Quarter ended September 30, 1962	2 $\frac{3}{8}$	2 $\frac{1}{4}$	3	2 $\frac{1}{2}$
Month of October, 1962	2 $\frac{1}{4}$	1 $\frac{7}{8}$	2 $\frac{1}{4}$	2 $\frac{1}{8}$
Month of November, 1962	2 $\frac{3}{8}$	2	3	2 $\frac{1}{2}$
January 10, 1963*	Bid 3 $\frac{1}{8}$		Asked 3 $\frac{1}{2}$	

* From the National Daily Quotation Service

For your further information, there are included with this letter, in addition to the formal offer of Hilton and a form of acceptance (and separate stock power), unaudited financial statements of Hilton Credit comprising a balance sheet as at December 31, 1962, and statement of consolidated earnings and deficit for the eight month period then ended.

Certain of the officers and directors of Hilton and Hilton Credit, who own, directly or indirectly, 651,617 shares of Hilton Credit Common Stock, have agreed to accept Hilton's offer, subject, however, to the right of the other stockholders if they so desire to tender their stock as set forth in the enclosed offer.

Yours very truly,

Hilton Hotels Corporation,
By Conrad N. Hilton,
Chairman of the Board and President.

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Hilton Credit Corporation

CONSOLIDATED BALANCE SHEET

(Unaudited) (1)

at December 31, 1962

ASSETS

Current Assets

Cash, U. S. Treasury bills and bank certificates of deposit.....		\$ 7,613,500.29
Accounts receivable	\$10,178,358.62	
Less allowance for credit losses.....	586,677.76	9,591,680.86
Prepaid expenses		163,508.35

Total Current Assets.....

17,368,689.50

Fixed Assets—(at cost)

767,886.77

Less allowance for depreciation.....

239,715.11

528,171.66

Customer Lists, Plates, Goodwill and Other Intangible Assets—at cost less amortization of \$372,666.68.....

647,333.32

Deferred Charges

217,358.67

Total Assets

\$18,761,553.15

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities

Notes payable to banks(2).....		\$12,150,000.00
Accounts payable		2,482,716.28
Accrued expenses		418,069.17
Mortgage payable		6,000.00
Subordinated notes payable due March 1, 1963(3)		5,000,000.00

Total Current Liabilities.....

20,056,785.45

Deferred Income

178,161.34

Reserve for Foreign Exchange.....

17,450.00

Long-Term Debt

Mortgage payable

\$ 42,000.00

Less portion payable within one year..

6,000.00

36,000.00

Stockholders' Equity—(Deficit):

Common stock, par value \$1.00 per share

Authorized 5,000,000 shares

Issued and outstanding 2,988,383 shares

2,988,383.00

Additional paid-in capital.....

4,346,528.36

Retained earnings—(Deficit).....

(8,861,755.00)

Total Stockholders' Equity—

(Deficit)

(1,526,843.64)

Total Liabilities and Deficit in Stockholders' Equity

\$18,761,553.15

Notes to Financial Statements form an integral part of this statement and should be considered in connection therewith.

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Hilton Credit Corporation

STATEMENT OF CONSOLIDATED EARNINGS AND DEFICIT

(Unaudited) (1)

For the Eight Months Ended December 31, 1962

Revenue

Discount income and membership fees.....	\$ 4,456,602.34
Other income	269,497.97
Total Revenue	<u>4,726,100.31</u>

Costs and Expenses

Data processing and card issue.....	773,533.83
Sales and associate services	151,680.39
Advertising and publicity	438,806.00
Credit investigation and collection	996,618.18
Provision for credit losses	622,374.33
Administrative and general	215,508.73
Depreciation and amortization	132,121.51
Interest	446,116.59
Other	149,894.64

Total Costs and Expenses	<u>3,926,054.26</u>
--------------------------------	---------------------

Net Profit	799,446.05
(Deficit) At April 30, 1962	(9,601,201.05)
(Deficit) At December 31, 1962	<u><u>\$ (8,861,755.00)</u></u>

Notes to Financial Statements form an integral part of this statement and should be considered in connection therewith.

NOTES TO FINANCIAL STATEMENTS

For the Eight Month Period Ended December 31, 1962

Note 1:

The figures contained in the Consolidated Balance Sheet and Statement of Consolidated Earnings and Deficit have been prepared by Hilton Credit Corporation and have not been examined by any Certified Public Accountants.

Note 2:

These Notes bear interest at $4\frac{1}{2}\%$ per annum. For further information with respect to the bank loans, reference is made to the Letter of Transmittal.

Note 3:

These Notes bear interest at 5% per annum. For further information with respect to the Subordinated Notes, reference is made to the Letter of Transmittal.

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Exhibit "F".

Hilton Hotels

Offer.

January 15, 1963

To the Holders of Common Stock of
Hilton Credit Corporation:

Hilton Hotels Corporation (hereinafter referred to as "Hilton") hereby offers to purchase at a price of \$3.25 per share, payable in cash, 1,390,706 of the issued and outstanding shares of Common Stock, par value \$1.00 per share, of Hilton Credit Corporation (hereinafter referred to as "Hilton Credit") upon the terms and conditions set forth herein. This offer will remain open until 4:00 o'clock P. M., Eastern Standard Time, on February 5, 1963. Hilton reserves the right at any time or from time to time to extend said period, by notice to Manufacturers Hanover Trust Company and American National Bank and Trust Company of Chicago, the Depositaries, given prior to the initial or any subsequent time for expiration of this offer, but in no event to a date later than February 15, 1963.

The purpose of Hilton in making this offer is to acquire 80% of the 2,988,383 issued and outstanding shares of Common Stock of Hilton Credit, namely, 2,390,706 shares (which includes 1,000,00 shares of Common Stock owned by Hilton) for the reasons set forth in the enclosed letter of transmittal. Hilton agrees to accept and pay for the shares of Common Stock of Hilton Credit tendered in the manner hereinafter set forth, if 1,390,706 of such shares (including shares tendered by the persons named in the following paragraph of this offer) are so tendered, provided that if less than that number are so tendered prior

to the expiration of this offer, Hilton shall not be obligated to purchase any of the shares tendered but in its sole discretion may elect to purchase all but not less than all of the shares tendered, and if Hilton elects not to purchase said shares, all shares of Common Stock of Hilton Credit received by the Depositaries will be returned to the depositing stockholders. If 1,390,706 or a greater number of said shares are deposited prior to the expiration of this offer, Hilton will deposit with the Depositaries the aggregate sum of \$4,519,794.50 in cash and thereupon 1,390,706 of the deposited shares will be transferred of record to Hilton. If more than 1,390,706 of said shares have been and remain so deposited after the reduction of the tenders referred to in the following paragraph of this offer has been made, a proportionate part of the shares tendered by each stockholder, determined by the ratio between the aggregate number of shares remaining on deposit and 1,390,706 (adjusted so as to avoid fractional shares), will be so transferred of record to Hilton and the remaining shares will be returned to the depositing stockholders, provided that Hilton may in its discretion, but shall not be obligated to, elect to purchase all of the shares of Common Stock of Hilton Credit in excess of 1,390,706 held by the Depositaries (including all shares tendered by the persons named in the following paragraph of this offer). If Hilton shall so elect, it will deposit with the Depositaries a sum in cash equal to the aggregate price payable for all such additional shares so purchased and such additional deposited shares will be transferred of record to Hilton. Hilton will pay all Federal and state stock transfer taxes payable in respect of shares purchased by it.

Mr. Conrad N. Hilton (including shares owned by a corporation controlled by him) and Colonel Henry Crown (including shares owned by a corporation controlled by him) and certain officers and directors of Hilton and Hilton Credit named below who own Common

Stock of Hilton Credit (referred to collectively in this offer and letter of transmittal as officers and directors) have agreed to tender and deposit all shares of said Common Stock of Hilton Credit owned by said officers and directors as set forth below opposite their respective names:

Conrad N. Hilton (including a corporation controlled by him).....	375,967
W. Barron Hilton.....	126,392
Colonel Henry Crown (including a corporation controlled by him).....	70,631
Conrad N. Hilton Foundation.....	28,334
Charles L. Fletcher.....	24,100
Robert P. Williford.....	14,150
Vernon Herndon	4,408
Lynn H. Montjoy.....	3,000
Porter P. Parris.....	1,910
H. R. Randall.....	1,021
C. N. Hilton, Jr.....	691
Robert F. Quain.....	539
Robert J. Caverly.....	464
Frank G. Wangeman.....	10
Total.....	<u>651,617</u>

upon the condition that if the aggregate number of shares of such Common Stock, including their shares, tendered and deposited shall exceed 1,390,706, and Hilton shall not elect to purchase all of the shares of such Common Stock in excess of 1,390,706 held by the Depositaries, the number of shares tendered by each of the officers and directors will be proportionately reduced so that the aggregate number of shares tendered and deposited shall be 1,390,706.

Stockholders of Hilton Credit may accept the offer hereby made by depositing with either of the Depositaries, Manufacturers Hanover Trust Company, 40 Wall Street, New York, New York, or American National Bank and Trust Company of Chicago, 33 North La Salle Street,

Chicago, Illinois, prior to the expiration of this offer, certificates representing shares of Common Stock, par value \$1.00 per share, of Hilton Credit, accompanied by a duly executed Acceptance in the form enclosed with this offer and by duly executed separate stock powers with signatures guaranteed.

For the benefit of Hilton Credit stockholders who are unable to deposit their certificates in the above manner, shares of Hilton Credit stock will be deemed properly tendered if a properly executed Acceptance, accompanied by certificates representing shares of Hilton Credit have been deposited with any commercial bank or trust company in the continental United States, or with any member firm of the New York Stock Exchange and either of the Depositories shall have received from such bank, trust company or member firm before the expiration of this offer a telegram giving the name of the stockholder, the serial numbers of the certificates deposited and the number of shares of Common Stock of Hilton Credit represented by each such certificate and stating that such certificates together with a duly executed Acceptance have been forwarded by such bank, trust company or member firm by registered mail to one of the Depositories.

Accordingly, if you desire to accept the offer of Hilton to purchase your shares of Common Stock of Hilton Credit, you should execute the enclosed Acceptance and Stock Power and forward the same, together with certificates for your shares, by registered mail, insured, to Manufacturers Hanover Trust Company at 40 Wall Street, New York, New York, or to American National Bank and Trust Company of Chicago at 33 North La Salle Street, Chicago, Illinois.

Yours very truly,

Hilton Hotels Corporation,

By Conrad N. Hilton,

Chairman of the Board and President.

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UNITED STATES DISTRICT COURT.
• • (Caption—63-C-2248) • •

AFFIDAVIT EVIDENCING COMPLIANCE WITH
GENERAL RULE 39.

(As Amended December 14, 1962).

Affiant is the attorney of record for Dora Surowitz, individually and on behalf of all other similarly situated shareholders of Hilton Hotels Corporation, and has knowledge of the matters covered by this affidavit and has read General Rule 39.

Affiant has not directly or indirectly solicited employment by the above-named party or parties, and knows of no solicitation of said party or parties by any person that has resulted in the employment of the affiant, except (here state all exceptions, or if none state "no exception"):

No exception.

Affiant has not paid, or promised to pay, and knows of no payment or promise of payment to the above-named party, or parties, of the costs of this case, or of the medical, living or other expenses of any party, or of any part of an attorney's fee, or of any portion of the recovery by suit or settlement herein to any person whatever other than the above-named party or parties and the attorneys of record herein, except (here state all exceptions, or if none state "no exception"):

No exception.

David R. Kentoff,

Affiant.

Subscribed and sworn to before me this 13th day of
December A. D. 1963.

Beatrice Sullivan,

(Seal)

Notary Public.